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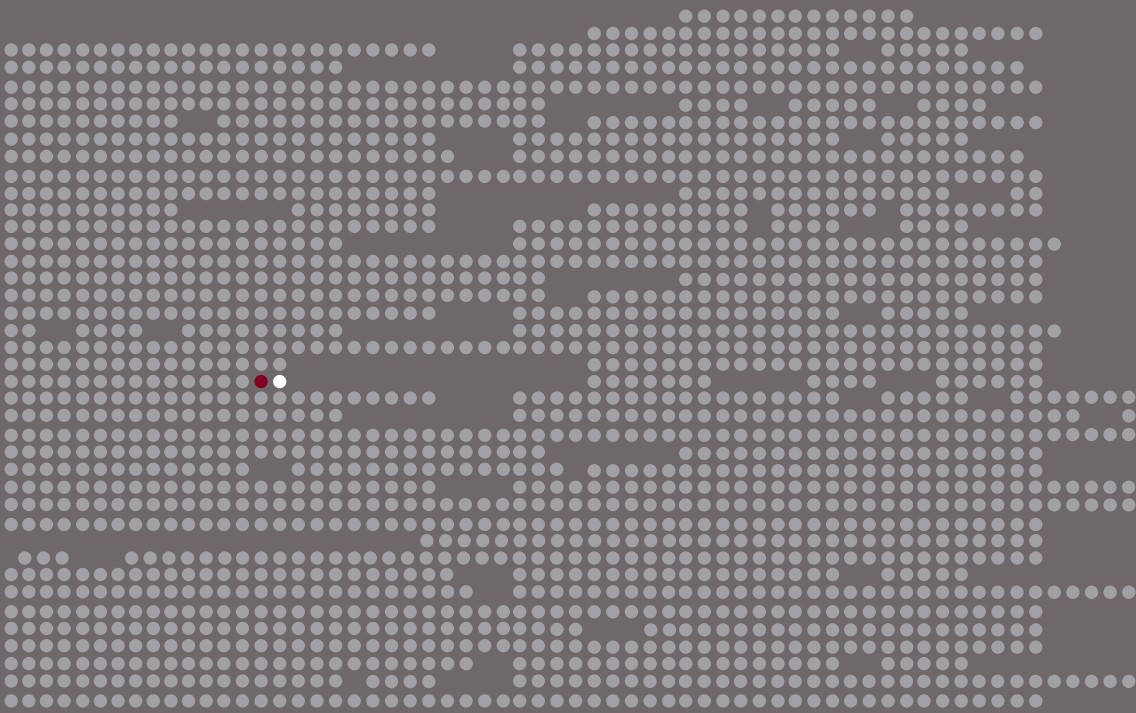
Comparative Analysis of European Legislations dealing with **Takeover bid:** implementation of Directive 2004/25/EC



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In this memorandum all Member States' Takeover bid legislations, reported or textually quoted in English language, are unofficial translations.

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice.

Definitions

"**European Takeover Directive**" or the **"Takeover Directive"** or simply the **"Directive"** means Directive 2004/25/EC approved on 21st April, 2004.

"Takeover bid" or **"Takeover"** or **"Bid"** or **"Offer"** means a public offer, other than by the Offeree company itself, whether mandatory or voluntary, made to the holders of securities of a company to acquire all or part of the securities, or with the aim of acquiring the control.

"Offeror" or **"Bidder"** means any physical or legal person governed by public or private law making a Bid.

"Offeree" or **"Target"** means the company whose securities are the subject of a Bid.

"Member State" means any country that has joined the European Union.

In this memorandum, unless otherwise expressed to the contrary:

(1) words in the singular include the plural, and words in the plural include the singular;

(2) words importing the masculine gender include feminine and neuter gender;

(3) references to any Law, Act, Code or regulatory provision shall be deemed to include the Law, Act, Code or regulatory provision as amended or re-enacted from time to time.

Presentation

The current crisis in the global financial markets gives unexpected resonance to the publication of Sodali's Comparative Analysis of European Regulations dealing with Takeover bids.

The unprecedented loss of confidence in the financial markets reflects a variety of problems, not the least of which are lack of transparency in business disclosure, poor communication between companies and investors, and uncertainty about the fairness and consistency of regulatory standards. These are problems that the European Directive on Takeover Bids aims to address, while still accommodating local regulatory regimes.

Sodali's Comparative Analysis should help companies, investors and their advisors to understand and deal effectively with the interplay of Takeover regulation within the EU and local markets. Takeover bids, although controversial, are recognized as an important factor in assuring the efficiency of financial markets. The Directive seeks to eliminate uncertainty about Takeover bids and promote impartiality and fairness. Sodali's Comparative Analysis should help to ensure that Takeover bids, when they occur, are compliant with regulatory requirements and conducted in the best interest of both issuers and the investing public.

John Wilcox*
Alvise Recchi**

* Chairman of Sodali
** CEO of Sodali

Introduction by Roberto Maviglia [1]
Contestability of European listed companies in the light of Takeover Directive implementation between offer and defence rules and disclosure rules

[1] Roberto Maviglia, Partner of Studio Legale Associato LTT.

1.

The current context

The effective entry into force of the European Directive on Takeover bids (2004/25/EC) in the regulations of different EU Member States took place in a historical moment characterized by serious difficulties for overall economic systems and financial markets.

The situation regarding the current financial and economic scenario appears to be much more difficult and very different from previous cyclical economic crises and has generated concerns and fundamental uncertainty. More specifically, questions have been raised on the basic principles underlying past reforms of financial market regulation in order to define an ideal model of market open to competition and based, as more as possible, on operators' self-discipline rather than on legal and binding rules enforced by Governments.

In this context, in Europe as well as most other important economic areas (e.g., North-America and East Asia), legislators and financial authorities are looking at introducing stronger rules in orderto control market operators' natural tendency towards innovation and quest for profit, and to contain the negative effects that unbridled globalisation can have on the development of national and international economic systems.

As a consequence, the Directive on Takeover bids aims to resolve all issues

affecting Takeover regulations and maximise the contestability of listed companies irrespective of whether the potential Offeror is a EU or a non-EU entity.

The method adopted by the Directive involves harmonising Member States' laws under the following aspects:

a) substantial rules concerning the right of minority shareholders to benefit, in any way, from value increases of the control premium;
b) rules aimed to limit the adoption of defensive measures by Target companies to frustrate a "hostile" Takeover bid (i.e. any Bid which does not have the support of the board of the Target company);
c) transparency rules to ensure an informed decision-making by securities holders on a Takeover bid and competition, also in terms of communication, between Offeror(s), majority shareholder(s) (to be replaced) and the Target company which defends itself.

The limitation of the defensive measures that Target companies may adopt is pursued in order to allow Member States to adopt, according to the Directive, the so-called "passivity rule" and "break-through rule".

The first rule (passivity rule) provides that, during the Offer period, unless duty authorised by the shareholders' general meeting, the board of directors of the Target company may not take any action or transaction which may frustrate the success of a hostile Bid.

The second rule (break-through rule) provides that, during the Offer period, any restrictions:

- on the transfer of securities, provided for in articles of association and in contractual agreements of the Offeree company, shall not apply vis-à-vis the Offeror; and

- on the voting rights, provided for in articles of association and in contractual agreements of the Offeree company, shall not have effect at the shareholders' general meeting.

Thus, the Directive aimed at achieving a level playing field across national markets within the EU, with reference to both the substantial aspects regarding the Offer and defence procedures, and the formal profile of mutual recognition of offer documents.

Nevertheless, an analysis of the outcomes, made on the basis of various modalities of Directive implementation in different national systems, produces contradictory results. If, on the one hand, effective harmonisation of the rules on disclosure has been achieved, the same cannot be said with regard to the different regulations on defensive measures which Target companies may adopt.

The improvement of market control efficiency for listed companies is, therefore, incomplete. Indeed, it may be based only on standardized transparency rules rather than a legal framework which limits and controls defensive measures available to Target company management and shareholders.

The failure to achieve European-wide harmonisation of substantial rules with reference to uniform and mandatory application of the passivity rule and break-through rule is based on two reasons: the first is a legal factor which grants Member States the mechanism of an optional transposition of the above rules; the second is the effect of the ongoing crisis in global financial system and world economy on Member States' legislators.

The first reductive factor of harmonisation: the optional implementation of the Directive

The optional implementation of the Directive did not encourage an effective harmonisation of defensive mechanism rules in terms of limiting instruments available to Target companies.

Some commentators believe that the Directive does not contribute to a level playing field since companies do not look like being more open than in the past. The most critical commentators even see the Directive as a step backwards.

Certainly, the Directive's drawn-out approval process proved very difficult. Some Member States were unwilling to abandon defensive measures against hostile Takeover bids launched by Offerors from different Member States. This position may be viewed as far-sighted, given the current situation and approach changes proposed in those Countries, such as Italy, more favourably disposed towards regulation aimed at minimising defensive measures that a Target company can take to block a Takeover.

The approval of the Directive marked a compromise with the inclusion of an "opt-out" provision allowing Member States to decide, when implementing the Directive, whether certain rules are mandatory for companies with registered offices in their territories.

The flexibility afforded by the Directive refers, in particular, to the passivity, break-through and reciprocity rules: the effective exposure of listed companies to the effects of Takeovers depends on the combination of these rules.

The transposition of the passivity, break-through and reciprocity rules by Member States is based on an "opt-in"/"opt-out" mechanism which allows for discretionary

decision-making on implementation. It should be pointed out, on the one hand, that optional implementation was crucial for approval of the Directive; on the other, it sanctioned non-uniform implementation among Member States.

Indeed, the majority of Member States opted not to subject their companies ex lege to the passivity and break-through rules and there was no significant increase in the number of Member States adopting the passivity rule following implementation respect to those ones which had already provided for such rules in their legal framework.

Moreover, by using the reciprocity rule, companies registered in EU countries which opted in to the mandatory application of the passivity rule, or companies that voluntarily include such a rule in their articles of association, can justifiably defend themselves against hostile Offers from companies registered in countries which decided to "opt-out", and that do not voluntarily include such a rule in their articles of association.

Only a small number of Member States decided to "opt-in" to the break-through rule, and most Member States chose to opt-in to the reciprocity rule.Therefore, it does not appear that transposition of the Directive has led to a Europe-wide level playing field. Of course, in the absence of any additional restrictions imposed by legislative reforms in the form of binding rules, if a number of listed companies voluntarily opt-in to the passivity and break-through rules, then a de facto level playing field might be achieved.

The second reductive factor of harmonisation: the ongoing crisis in global financial system and world economy

With reference to the influence of the current economic situation, Directive's aim to increase contestability of listed companies, by limiting the possibility to adopt defence measures against Takeovers, has given way to Governments and Supervisory Authorities' interest in monitoring more closely financial transactions concerning principal companies. Such interest is essential for the purpose of favouring stability of corporate control and assuring listed companies' going concern that could eventually be led to a crisis by acquisition transactions of companies funded by high leverage.

This trend is supported also with reference to the risk, linked to changes in the economic framework, that in some cases only outwardly hostile raids may improve efficiency.

In fact, the public response to the crisis affecting international financial system has thrown the market for corporate control of listed companies back to a Homeric age, with men and demigods locked in an unbalanced struggle for supremacy.

More specifically, world Governments had no choice but to save banks at the cost of a complete credit freeze and the destruction of the real economy. In addition, minimal capitalisation means companies of all types are easy prey, and raiders are likely to start exploiting opportunities soon. These raiders will be not only sovereign funds of countries with a significant commercial surplus but also, in a second moment, the/those banks throughout the world that have been saved from the brink of failure by a public capital injection, and that have an unlimited debt capacity (being guaranteed by the State).

In the face of these modern economic 'demigods' threatening to distort the market at will, it is vital to rapidly rethink national and EU Takeover regulations in order to redress the imbalance and allow listed companies, shareholders and institutions to assess Offerors and the commercial authenticity of Offers.

These entities, in practice, cannot fail and it is not always clear to which shareholders and/or alternative control mechanisms they respond.

The risk is not insignificant since raiders are not always transparent entities that satisfy market rules. In the developing economic framework, raiders could include investment fund entities, sovereign wealth funds (SWFs), strong banks or industrial companies with publicly derived financing, making their interests not authentically competitive.

Therefore, a common legal framework (such as the European Takeover Directive), designed to maximise the efficiency of the market for corporate control and reinforce the efficiency and competitiveness of listed companies, may turn out to be a Trojan horse, extending public intervention into the economic system, and also, in limited cases, creating pockets of uncontrollable inefficiency. Control of these pockets is impossible as they would occur in a grey area between private and public capital: an area for which corporate governance rules are not always well defined. Above all, the greatest risks relate not only to cross-border Offers from non-EU entities, but may also involve intra-EU Offers if rules on public intervention to renew crisis-stricken economies are not harmonised in advance.

The shakes and the about-turns suffered by the Italian legal system are emblematic. In front of these modern economic demigods who could alter the market the Italian

legislator modified the rules on Takeovers, in an attempt to redress the balances so that listed companies, their shareholders and, in some cases, institutions are allowed to consider, on a case by case basis, the potential Bidders' nature and the entrepreneurial authenticity of the proposal.

On the subject, Italian rules on Takeovers, previously based on the provisions contained in the Consolidated Law on Finance (Legislative Decree no. 58 of 1998), and then confirmed following implementation of Directive 2004/25/EC by Legislative Decree no. 229 of 19th November, 2007, were particularly restrictive with reference to defence measures that companies could adopt to frustrate a hostile Bid. In fact, the Italian legislator established the mandatory application of the passivity rule and break-through rule, even if limited by the adoption of the reciprocity clause, according which the afore mentioned rules do not apply when an Offer is launched by an Offeror not subject to such rules or to equivalent provisions. The problem is that such mandatory application of the passivity and break-through rules made the Italian legal system more vulnerable respect to other European countries. Furthermore, the severe economic crisis lowered the market value of most important Italian listed companies and banks, so they risked to be bought by foreign hostile Offerors too easily.

Therefore, Italian Government decided to change the legal framework, issuing the Law Decree no. 185 of 29th November, 2008 (the "Anti-Crisis Decree"), converted into the Law no. 2 of 28th January, 2009, which amended articles 104, 104-bis and 104-ter of the Consolidated Law on Finance.

Such Law no. 2 of 28th January, 2009 provided for the elimination of the mandatory

application of both the passivity rule and the break-through rule, even though, according to article 123, para. 3, of the Consolidated Law on Finance, if shareholders of the Target company intend to adhere to the Bid they may withdraw from shareholders' agreements, if any. Anyway, notwithstanding the above mentioned abolition,Italian listed companies may provide for the passivity and break -through rules in their articles of association.

Harmonisation of disclosure rules: the effects on competition

The entry into force of new Takeover regulations in Member States, which attaches particular importance to the information rules, led operators and legal/economic experts to reassess the centrality and the value of information and disclosure procedures in Takeover bids, not only with reference to the protection of Target company's shareholders (and, particularly, in terms of competing Bids), but also to the importance of competition in the company control market and consolidation of listed companies' contestability.

This applies to all the information relating to Takeovers and to modalities of public disclosure for all parties involved in the Bid (informative aspects).

There is no doubt that rules concerning informative aspects have been almost completely harmonised, given that they were not affected by the factors impacting on the application of the substantive rules provided for by the Directive.

Information and disclosure requirements go beyond the obligation to publish the offer document and publication procedures: Target shareholders shall be properly informed about the content of any Offer(s). Information and disclosure can include:

a) preventing information abuse (e.g., Offeror's duty to give immediate notification of a decision to launch a Bid);
b) rules for publishing an opinion on the Bid by the Offeree board of directors and justification for such opinion;
c) full transparency on the capital structure of listed companies, rules concerning corporate governance, shareholders' assets and anything else affecting the success of a Takeover bid.

Moreover, information and disclosure issues become more important as geographic areas and number of legal systems involved increase.

Given the potential differences existing in corporate regulations between Member States (particularly on corporate governance, shareholders' assets, retail/institutional investors and language), the difference between success and failure for a Takeover bid can depend on the ability to reach as many interested investors/shareholders as possible, and to provide the offer document and other information required in such a way (language, form and time) as to allow investors/shareholders to make an informed decision.

Cross-border Takeovers and information rules

Within the framework of the Directive, a Takeover bid involving different countries and different legal systems may be defined as a "cross-border Takeover".

The concept of a cross-border Takeover covers a number of hypotheses. In particular , a Bid may be launched for a company which is listed in one country but whose shareholders are located around the world. This generally applies for all listed companies other than the smallest ones.

The Offeror may limit his/her activity to just one country or extend it (through various means) to a certain number of them. In practice, this involves publication and disclosure of an offer document in one language and one country only, either excluding disclosure outside that country or using different means (Internet, e-mail, post, delivery of the offer document itself) to communicate with shareholders resident in different countries.

Alternatively, the offer document may be disclosed in different countries and languages.

Depending on the method adopted, the applicable rules may differ and the Offer may fall under the jurisdiction of Supervisory Authorities of different countries. It means that Offeror's activities may not be recognised as legitimate: legitimacy depends on the legislation and practices applied by the Supervisory Authorities in relevant countries.

Cases where an offer document is published and limited to one country with the exclusion of any activities outside that country may also be described as cross-border Bids, insofar as residents in other Member States are likely to adhere to the Offer. In other cases, there may be a formal cross-border Takeover bid, particularly if the Target company issues securities listed in more than one country. In this latter case, the offer document will be disclosed in all relevant countries.

In a context of non-harmonised regulations, problems associated with disclosure duties at a European level and the difficulties of voluntary disclosure procedures (towards people interested in the Bid, such as investors-shareholders resident in different countries and protected by different regulations) were incompatible, as

were problems stemming from a lack of harmonised rules on Offer conditions and defensive measures available to Target companies, with a competitive and efficient market.

The European offer document

In terms of information, despite Directive's provisions for standardized minimum content and mutual recognition of offer documents, a real "European passport" does not yet exist because any offer document is subject to the Supervisory Authority's assessment of the Member State where such document is to be published.

Although there are still not specific provisions on this matter in national regulations or the Directive, the host Supervisory Authority's assessment could be required on the basis of Article 6 of the Directive. Indeed, according to this provision, the offer document shall be translated and integrated upon request of another Member State Authority in relation to requirements for offer acceptance and receipt of amounts due at close of the Bid, as well as tax arrangements covering sums offered to holders of securities.

The delay that the above phase could entail for publication procedures in different Member States may be avoided through co-operation between the Authorities of the different Member States and exchange of the information required for offer document approval. Guidelines on disclosure requirements for each Member State could be drawn up by Supervisory Authorities themselves to allow an Offeror to prepare an exhaustive offer document satisfying requirements of all Supervising Authorities prior to assessment.

Defining an optimal preparation procedure for offer documents could speed up acceptance procedures by Supervisory Authorities in each country and ensure investors receive proper information. It can be, therefore, advisable that the offer document contains detailed information concerning those aspects which might vary in the different countries where Target investors are located and where the offer document is to be published.

Information could include applicable tax arrangements for the amounts paid to shareholders accepting the Offer or acceptance and payment formalities (according to the Directive, the host Supervisory Authority is entitled to request integration of a document previously approved by another Supervisory Authority), and other issues that may vary from country to country. The Offeror could include a schedule showing tax arrangements on a country-by-country basis and any specific provisions relating to the acceptance of the Bid and its price.

This integration would respond in advance to any potential requests by the Authorities involved (where legislation expressly provides for such powers) and would also provide with a document capable of satisfying investors' information needs.

The adoption of such practices could have both advantages and disadvantages. In fact, an illustration of comparative regulations might confuse retail investors unused to reading detailed offer documents, so it might be appropriate to arrange sections country by country, integrated with each version of the offer document. In this way, potential requests of the host Supervisory Authorities could be anticipated.

Voluntary communication

Voluntary communication (e.g. disclosure not explicitly required by the Directive or national regulations) is a key element for the success of any Bid, including cross-border Bids. It is usually wise to supervise the disclosure of information to shareholders involved in the Bid. This is particularly true in the case of competing Bids, or when the Target company attempts defensive measures subject to authorisation procedures at a shareholders' general meeting.

When the passivity rule is applied and if the applicable regulations require high majorities for certain transactions (e.g., up to 50% in Spain), it may be necessary to solicit as many investors/shareholders as possible to participate in the shareholders' general meeting. In this case, an effective voluntary disclosure programme may be necessary in order to inform investors/shareholders about the passivity rule. It stands to reason that compliance of the information disclosed by "participants" in accordance with the principle of fair and impartial disclosure is transposed in almost all national regulations prohibiting misleading or purely promotional communication that may affect decisions of the shareholders' general meeting on defensive measures.

The importance of disclosure towards shareholders/investors is clear and, in some cases, extends beyond shareholders' voting preferences and is useful to encourage participation in general meeting to reach a given quorum. This leads to a situation where informed shareholders participate in enlarged general meetings and are capable of making decisions on complex transactions subject to the passivity rule. The aims relating to management protection or the Offeror's resistance to defensive

measures can indeed overlap with the objective of efficiency in decision-making processes of Target company, which is based on the shareholders' general meeting instrument.

Similarly, disclosure is important in case of coexisting, successive and competing Bids because the need for intelligible and timely information for shareholders is crucial, given the deadlines for individual Bids.

In most cases, the success of an Offer over another one is determined by two elements of competition: the competitiveness of the Offer and the efficiency of disclosure.

The Directive places great emphasis on Article 8, para. 1, which provides that a Bid has to be made public in such a way as to ensure market transparency and integrity for the securities of the Offeree company, the Offeror or any other party affected by the Bid, in order to prevent the publication or dissemination of false or misleading information.

Article 8, para. 2, requires that the disclosure of information (i.e. the decision to make a Bid, etc.) and documents (i.e. drafting and publication of the offer document, etc.) is carried out in such a manner as to ensure that they are readily and promptly available to the Offeree company's shareholders. These provisions implemented in national regulations encourage objective and informative voluntary disclosure.

Therefore, in addition to mandatory disclosure, there are also several issues relating to disclosure involving a variety of communication media (paper, Internet or other electronic systems).

More specifically, according to the principles of the Directive, communication activities, carried out during an offer period by individuals who may be involved and aimed at facilitating the dissemination of information among public investors/shareholders, is considered legitimate. This is true for information relating to a Bid in the strict sense (and the underlying project), and to the official position of the Target company's board members and for information associated with Takeover-related events, such as the shareholders' general meeting convened to decide on defensive measures proposed by the board of directors.

Even prior to implementation of the Directive, some legal systems (e.g. Italy) explicitly referred to certain media for promoting or contesting a Bid or distributing an offer document summary to facilitate public comprehension of the transaction. This involves communication media that can be used subject to certain terms and conditions.

The general principle of the pre-Directive regulatory framework (consistent with the new discipline) is that any message summarising an offer document shall include all warnings contained in the offer document and indicate the corresponding paragraphs of the original offer document where the information is explained, thus maintaining a close correlation between the summary and the complete offer document.

Promotion and marketing have to be recognisable as such, any information shall be clear, correct and justified and the content shall be compliant with previously disclosed documentation and cannot have the potential to cause mistakes about the nature of the transaction and the financial instruments involved.

Informational e-mails and summaries may be circulated or e-mailalerts sent in relation to the expiration date of a Bid. Brochures, announcements, notices, meetings, presentations, press releases can be disclosed and a call centre (Q & A) set up to answer questions or directly inform investors/shareholders about available documentation and upcoming deadlines (shareholders' general meeting, terms of adherence, etc).

Operators shall comply with general principles in distinguishing informational from promotional messages (which shall require specific measures and disclaimers for the different forms of disclosure), staying within fair play and bona fide limits, and in making every effort to reach as wide an audience as possible, or ensuring general access to information disclosed voluntarily or in accordance to the law.

The way in which the principle of voluntary and additional disclosure might be implemented in different legal systems largely depends on rules issued and applied by the different Supervisory Authorities (secondary regulation) and how these are interpreted.

This may also lead to difficulties in completing cross-border Offers and may even put the outcome at risk.

Debate on the opportunity for harmonization and process of Directive approval

2.

Progress towards the development of a European Takeover Directive started at the beginning of the 1970s.

In the mid-1980s, a new European Directive for Takeovers was drafted as part of proposals for the completion of the internal market. This draft was subject to such widespread criticism and, as a result, it was not formally presented.

In 1988, a practical case of a Takeover bid launched across different Member States highlighted the inadequacies of arrangements for cross-border Takeovers. In January 1989, the European Commission submitted a proposal for a Directive on Takeover bids to the European Council which represented the first real step indicating the intention to adopt a Takeover bids Directive.

This proposal failed, so the European Commission decided to prepare another draft of Directive which took into account the previous criticism.

There was a deep change in the spirit of the proposed Takeover Directive, evolving from an instrument of detailed harmonisation to a "framework Directive" incorporating an agreement of general principles and with few detailed provisions. Finally, this new proposal emerged in 1996 and was adopted by the European Commission in 1997. Following the agreement on the Council's Common Position in June 2000, the conciliation process between European Parliament and the European Council was characterised by a significant parliamentary opposition to the principle of the passivity rule (board neutrality).

On 4th July, 2001, the European Parliament refused to accept the conciliation compromise and discarded the proposed Directive.

Failure of the European Parliament to approve the Directive did not obstruct the progress completely. The European Commission appointed a High-Level Group of Company Law experts, chaired by Professor Jaap Winter, to consider "issues related to pan-European rules for Takeover bids" [(2)]. The Group's report, delivered in January 2002, endorsed the most significant provisions of the previously proposed Directive, including the rule of board neutrality.

On 2nd October, 2002, a new proposal, largely based on the conclusions of the Winter Report, was presented to the European Parliament and the Directive was finally approved on 21st April, 2004.

However, the agreement was achieved only after insertion of compromise provisions allowing for "opting out" and "reciprocity", thus leaving significant regulatory freedom to individual Member States.

The new Directive is therefore a compromise, which represents only a first step towards harmonization of national Takeover laws within the European Union.

Given the troubled history of the Directive and strongly divergent national positions, it is clear that the introduction of these provisions was necessary to ensure agreement on any kind of pan-European Takeover rules.

Some of the most interesting principles, provided for by the Directive, are the following:

- a regulatory framework for bodies that supervise Takeover bids;
- general principles which apply to the conduct of Takeover bids;

[(2)] Report of the High Level Group of Company Law Experts on Issues Related to Takeover Bids, published on 10th January, 2002 is available on http://ec.europa.eu/internal_market/company/docs/Takeoverbids/2002-01-hlg-report_en.pdf.

- basic rules on Takeover bids such as, for instance, the possibility or the obligation to make a Takeover bid (respectively, voluntary or mandatory), the price that shall be paid to shareholders in case of a mandatory Bid, the contents of offer documents prepared by an Offeror, requirements to inform employees of the Target company, the time period a Takeover bid will be open for, and disclosure requirements for the Bidder and affiliated people;
- mutual recognition of offer documents;
- provisions restricting barriers to Takeovers, such as action that may be taken to prevent a Takeover by a company or its board of directors (passivity rule, break-through rule and reciprocity rule);
- disclosure requirements for companies; and
- provisions dealing with issues of, and for, residual minority shareholders following a successful Takeover bid ("squeeze-out" and "sell-out" rights).

Analysis of the Directive 2004/25/EC

3.

The Takeovers Directive is a "minimum standards Directive" that shall harmonise EU Takeover regulations in relation to very limited areas.
The Directive intends to "create Community-wide clarity and transparency on legal issues in the event of Takeover bids and to prevent patterns of corporate restructuring within the Community from being distorted by arbitrary differences in governance and management culture", as provided for in the Preamble.
As the Directive does not contain detailed provisions, it cannot be considered "self-executing". In fact, Member States shall bring into force laws, regulations and administrative provisions necessary to comply with this Directive in accordance with their national systems.
Moreover, Member States can transpose the Directive with derogations: it means that each EU country will be able to implement it differently and have its own Takeover regulation.
In February 2007, the European Commission published a report on the implementation of the Directive. Such report shows that Member States used the options available in the Directive on key provisions. This involves the creation of new barriers to Takeovers instead of eliminating them. Moreover, only a small number of countries met the deadline for implementation of the Directive.
According to Article 1 of the Directive, the Directive itself applies only to Takeover bids for the securities of a company governed by the law of a Member State if those

securities are admitted to trading on a regulated market as defined by Article 1(13) of Directive 93/22/EEC [3].

Article 3 of the Directive provides for six general principles which Member States of public companies shall comply with. These principles represent the required minimum standard:

- all securities' holders of an Offeree company of the same class shall receive equivalent treatment;
- there shall be sufficient time and information for investors to decide whether to accept an Offer;
- the Offeree's board members shall act in the interests of the company and give holders of the securities the possibility to decide on the merits of the Bid;
- the normal functioning of markets shall not be distorted and false markets shall not be created;
- the Offeror may not make an Offer unless he/she has ensured that can pay the full consideration;
- the Takeover process should not unreasonably hinder the conducting of the Target's business.

[3] Article 1(13) of Directive 93/22/EEC: Regulated market shall mean a market for the instruments listed in Section B of the Annex which:
- appears on the list provided for in Article 16 drawn up by the Member State which is the home Member State as defined in Article 1(6)(c);
- functions regularly;
- is characterized by the fact that regulations issued or approved by the competent authorities define the conditions for the operation of the market, the conditions for access to the market and, where Directive 79/279/EEC is applicable, the conditions governing admission to listing imposed in that Directive and, where that Directive is not applicable, the conditions that must be satisfied by a financial instrument before it can effectively be dealt in on the market;
- requires compliance with all the reporting and transparency requirements laid down pursuant to Articles 20 and 21.

The Directive also regulates several aspects of conduct for Bids, including: jurisdiction rules in cross-border Takeovers; transparency provisions; mandatory Bid requirements (Article 5); mutual recognition of offer documents (Article 6); optional articles concerning restrictions on frustrating action (Article 9), and the unenforceability of restrictions on the transfer of securities and certain voting and other rights (the break-through principle in Article 11); the "reciprocity principle" (Article 12); and the "squeeze-out" and "sell-out" rights (Articles 15 and 16).

3.1 Supervisory Authority and applicable law

Provisions relating to Supervisory Authorities and the applicable laws are provided for by Article 4 of the Directive, which aims to harmonise the jurisdiction rules. According to this Article:

- each Member State is required to designate the competent authority for Bid supervision;
- the designated authority can be either a public or private authority;
- Member States shall inform the European Commission of this designation; and
- authorities have to exercise their functions impartially and independently of all parties to a Bid.

In a Takeover Bid, the competent Supervisory Authority is the designated Authority of the Member State in which the Offeree company has its registered office if said company's securities are admitted to trading on a regulated market in that Member State (home Supervisory Authority).

The Directive lays down rules for designating the competent supervisory authority in other cases (e.g. securities not admitted or admitted to trading on more than one regulated market):

a) if the Offeree company's securities are not admitted to trading on a regulated market in the Member State in which the company has its registered office, the competent Supervisory Authority shall be that of the Member State on the regulated market of which the company's securities are admitted to trading;

b) if the Offeree's securities are admitted to trading on regulated markets in more than one Member State, the competent Supervisory Authority shall be that of the Member State on the regulated market of which the securities were first admitted to trading;

c) if the Offeree's securities are first admitted to trading on regulated markets in more than one Member State simultaneously, then the Offeree shall determine which of the Supervisory Authorities of those Member States shall be competent to supervise the Bid by notifying those regulated markets and their Supervisory Authorities on the first day of trading;

d) if the Offeree's securities are already admitted to trading on regulated markets in more than one Member State on the date laid down in Article 21 (20th May, 2006) and were admitted simultaneously, the Supervisory Authorities of those Member States

shall agree which of them shall be competent to supervise the Bid within four weeks of the above mentioned date. Otherwise, the Offeree shall determine which of those Authorities is competent on the first day of trading following that four-week period.
Of course, decisions relating to the choice of the Supervisory Authority are to be made public by Member States.
A crucial issue is to establish which Takeover regulation is applicable. In fact, a problem of overlapping jurisdiction can occur when companies do not have their registered office in the same Member State in which their securities are admitted to trading. Bids for such companies will have to be made in compliance with two sets of rules.
In the cases referred to in (a) and (c) matters relating to the amount offered in the case of a Bid (in particular the price), the Bid procedure (in particular the information on the Offeror's decision to make a Bid, and the contents of the offer document and disclosure of the Bid) shall be dealt with in accordance with the rules of the Member State of the competent Authority.
In matters relating to the information to be provided to the employees of the Offeree and in matters relating to company law (in particular, the percentage of voting rights which confers control and any derogation from the obligation to launch a Bid, the conditions under which the board of the Offeree may undertake any action which might result in the frustration of the Bid), the applicable rules and the competent Authority shall be those of the Member State in which the Offeree has its registered office.
Member States shall ensure that all people employed or formerly employed by their

Supervisory Authorities are bound by professional secrecy. No information covered by professional secrecy may be divulged to any person or Authority except under provisions laid down by law.
The Directive does not affect the power of Member States to designate judicial or other authorities to deal with disputes and decide on irregularities committed in the course of Bids or the power of Member States to regulate whether and when parties to a Bid are entitled to bring administrative or judicial proceedings.
The Supervisory Authorities and the authorities responsible for supervising capital markets shall co-operate and provide each other with information. Information exchanged will be covered by rules of professional secrecy.

3.2 Types of Takeover bids: mandatory and voluntary Bids

The mandatory Bid rule is defined by Article 5 of the Directive. This Article provides that any shareholder who, as a result of his/her own acquisition or the acquisition by persons acting in concert with him/her, holds securities of a company giving him/her control of that company, is required to launch a public Offer addressed to all the holders of those securities for all their respective holdings in the Offeree at an equitable price. The equitable price shall be equal to the highest price paid for the Offeree's securities by the Offeror over a period, to be determined by each EU Member State, ranging from six to twelve months preceding the mandatory Bid. This provision is laid down by the Directive in order to protect minority shareholders.

Member State where the Offeree company has its registered office is free to fix the percentage of voting rights conferring control of the company. Member States are not required to specify the same percentage threshold and there is no maximum threshold. Member States shall fix the pre-offer time period for determining the minimum price for the mandatory Bid.

The Offeror shall increase his/her Offer if, before the close of the mandatory Bid, he/she, or any concert party, purchases securities at a price higher than the Offer price. The mandatory Bid provision does not apply if the Offeror obtains control as a result of a previous voluntary Offer.

Member States shall ensure that a fair price is guaranteed for voluntary Offers.

Under the Directive, the Offer can be considered fair if the Offeror has acquired securities representing not less than 90% of the Offeree company's capital carrying voting rights comprised in the Bid.

3.3 Squeeze-out and sell-out rights

Member States shall ensure that squeeze-out and sell-out rights are introduced for Offeror and Offeree company shareholders.

The right to squeeze-out minority shareholders allows an Offeror who has acquired a very large part of the share capital of a company to acquire all the outstanding shares.

Article 15 of the Directive provides that the squeeze-out right should be permitted when the Offeror:

- holds securities representing not less than 90% of the capital carrying voting rights and 90% of the voting rights in the Offeree company. Member States can set a higher threshold which may not, however, be higher than 95% of the capital carrying voting rights and 95% of the voting rights. The Directive leaves Member States free to fix their own thresholds and time periods;
- following the acceptance of the Bid, has acquired or contracted to acquire securities representing not less than 90% of the Offeree company's capital carrying voting rights and 90% of the voting rights comprised in the Bid. Member States shall ensure that rules are in force that make it possible to calculate when the threshold is reached.

If the Offeror wishes to exercise the right of squeeze-out, he/she shall do so within three months of the end of the period allowed for Bid acceptance referred to in Article 7 of the Directive (see the following paragraph 3.4).

Article 16 of the Directive establishes that minority shareholders may exercise their sell-out rights, forcing the majority shareholder to buy their remaining securities at a fair price, and under the same conditions of the right of squeeze-out.

3.4 Period of acceptance

According to Article 7 of the Directive, Member Sates shall provide that the period allowed for the acceptance of a Bid may not be less than two weeks nor more than ten weeks from the date of publication of the offer document. Member States are allowed to extend the ten-week period on condition that the Offeror gives at least two weeks' notice of the intention of closing the Bid.
Member States may provide for rules changing the above period in specific cases (e.g. in order to allow the Offeree company to call a shareholders' general meeting to consider the Bid).

3.5 Price determination

Price determination rules are provided for by the second part of Article 5 setting out mandatory Bid procedure; this type of Bid shall be made at an equitable price, which is defined as the highest price paid for the same securities by the Offeror or any person acting in concert with him/her during a period, fixed by Member States, of not less than six months and not more than twelve months before the Bid.

If, after the Bid has been made public and before the Offer closes for acceptance, the Offeror purchases securities at a price higher than the Offer price, then the Offeror shall increase his/her Offer so that it is not less than the highest price paid for the securities so acquired.

According to the general principles defined by Article 3, the Supervisory Authorities of Member States can adjust the price either upwards or downwards in certain circumstances and in accordance with criteria that are clearly determined [4] . These decisions shall be made public.

The Offeror may offer, as payment, securities, cash or a combination of both. A cash alternative shall be included by the Offeror if his/her Offer consists of liquid securities admitted to trading on a regulated market.

In any case, the Offeror shall offer a cash payment at least as an alternative where he/she, or people acting in concert with him/her, has purchased for cash securities carrying 5% or more of the voting rights in the Offeree company, during a period beginning at the same time as the period determined by the Member State in accordance with paragraph 4 and ending when the Offer closes for acceptance.

Member States may provide for further means to protect interests of the securities' holders insofar as those instruments do not hinder the normal course of a Bid (Member States are not allowed to introduce further defensive measures for Offeree companies).

[4] Article 5 also provides that " […] to that end, they may draw up a list of circumstances in which the highest price may be adjusted either upwards or downwards, for example where the highest price was set by agreement between the purchaser and a seller, where the market prices of the securities in question have been manipulated, where market prices in general or certain market prices in particular have been affected by exceptional occurrences, or in order to enable a firm in difficulty to be rescued. They may also determine the criteria to be applied in such cases, for example the average market value over a particular period, the break-up value of the company or other objective valuation criteria generally used in financial analysis".

3.6 Takeover bid disclosure of information (mandatory and voluntary information)

3.6.1 Mandatory disclosure of information provisions

The Directive lays down rules dealing with Takeover bid mandatory information in Articles 6, 8, 10 and 14.

Under Article 6, Member States shall ensure that rules dealing with the following obligations are in force:

- the decision to make a Bid shall be made public immediately;
- the Supervisory Authority shall be informed of the Bid;
- as soon as the Bid has been made public, the boards of the Offeree company and the Offeror must inform the representatives of their respective employees or, where there are no such representatives, the employees themselves.

Another important provision in Article 6 regards the offer document, which shall be drawn up and made public, without undue delay, by the Offeror. The offer document shall contain specific information [5] to enable the holders of securities of the Offeree company to reach a properly informed decision on the Bid. By the way,

[5] (a) The terms of the Bid; (b) the identity of the Offeror and, where the Offeror is a company, the type, name and registered office of that company; (c) the securities or, where appropriate, the class or classes of securities for which the Bid is made; (d) the payment offered for each security or class of securities and, in the case of a mandatory Bid, the method employed in determining it, with details of the way in which that payment is to be paid; (e) the compensation offered for the rights which might be removed as a result of the break-through rule laid down in Article 11(4), with details of the way in which that compensation is to be paid and the method employed in determining it; (f) the maximum and minimum percentages or quantities of securities which the Offeror undertakes to acquire; (g) details of any existing holdings of the Offeror, and of persons acting in concert with him/her, in the Offeree company; (h) all the conditions to

Article 18 provides that the Commission shall be assisted by the European Securities Committee, without prejudice to the implementing measures already adopted, for a period of four years after the entry into force of the Directive, in order to decide if other information shall be included in offer documents.

The offer document shall be communicated to the Supervisory Authority before it is made public by the Offeror. After that, the offer document shall be communicated by both Offeree and Offeror companies to the representatives of their respective employees or, where there are no such representatives, to the employees themselves.

The parties to a Bid shall provide the Supervisory Authorities of their Member State, at any time and upon request, with all information in their possession concerning the Bid that is necessary for the Supervisory Authority to discharge its functions.

Even though there is no "European passport" of equivalent documents, Article 6 lays down provisions for mutual recognition of offer documents.

Where the offer document is subject to the prior approval of the Supervisory Authority and has been approved, it shall be recognised (translated if required) in any other Member State where the Offeree company's securities are admitted to trading.

which the Bid is subject; (i) the Offeror's intentions with regard to the future business of the Offeree company and, in so far as it is affected by the Bid, the Offeror company and with regard to the safeguarding of the jobs of their employees and management, including any material change in the conditions of employment, and in particular the Offeror's strategic plans for the two companies and the likely repercussions on employment and the locations of the companies' places of business; (j) the time allowed for acceptance of the Bid; (k) where the payment offered by the Offeror includes securities of any kind, information concerning those securities; (l) information concerning the financing for the Bid; (m) the identity of persons acting in concert with the Offeror or with the Offeree company and, in the case of companies, their types, names, registered offices and relationships with the Offeror and, where possible, with the Offeree company; (n) the national law which will govern contracts concluded between the Offeror and the holders of the Offeree company's securities as a result of the Bid and the competent courts.

The approval of the Supervisory Authorities of those Member States is not necessary, even though, as explained above [6], the offer document may be subject to the assessment of the host Supervisory Authorities. Indeed, Supervisory Authorities can require further information, but only if such information is specific to the market of a Member State or Member States on which the Offeree company's securities are admitted to trading and relates to:

- formalities to be complied with for Bid acceptance and receipt of payment due at the close of the Bid;
- tax arrangements to which the payment offered to shareholders will be subject.

Under Article 8, transparency and integrity for the securities of the Offeree company shall be guaranteed when a Bid is made public in order to prevent the publication or dissemination of false or misleading information.

Member States shall ensure that the disclosure of all information and documents will be promptly available to the holders of securities and to employees' representatives.

Article 10 requires companies to make detailed information public on their annual report (e.g. information concerning share capital, shareholders' agreements containing restrictions on the transfer of securities, restrictions on voting rights, etc.). This kind of information is probably already required by Takeover regulations or corporate governance codes, but not in the annual report. In case of companies whose securities are admitted to trading on a regulated market in a Member State, Member States ensure that the board presents an explanatory report to the annual shareholders' general meeting.

[6] See Introduction by Roberto Maviglia.

Article 14 states that the Directive shall be without prejudice to Member States' provisions concerning information and consultation of employees' representatives and co-determination with the employees of the Offeror and the Offeree company, if governed by the relevant national rules, and in particular those adopted pursuant to Directives 94/45/EC, 98/59/EC, 2001/86/EC and 2002/14/EC.
Member States shall ensure that a Bid is made public in such a way as to guarantee market transparency and integrity for the securities of the Offeree company, the Offeror or any other company affected by the Bid, and to prevent the publication or dissemination of false or misleading information.

3.6.2 Voluntary disclosure of information

Voluntary disclosure of information is a practice of communication not required under the Directive or by national regulations.
The Directive provides that Member States may require the Supervisory Authority to be informed before such a decision is made public (Article 6).
This provision on voluntary disclosure is the only one expressly laid down in the Directive.

3.7 Passivity rule

Article 9 regulates the passivity rule (board neutrality) and establishes that, during the period starting from the announcement of the Bid and ending when the result of the Bid is made public or the Bid lapses (Member States may anticipate this period), the board of the Offeree company shall obtain the prior authorization of the shareholders' general meeting before taking any action which could jeopardize the Bid's chances of success (except for the search of alternative Bids), and, in particular, before issuing any security which might impede the acquisition of control of the Offeree company.

Furthermore, any decision approved before the Bid, but still not applied, which are outside the company's normal course of business and might frustrate the Bid, need the prior consent of the shareholders' general meeting.

Member States shall ensure that the board of the Offeree company draws up and publicises a document dealing with its opinion of the Bid and the impact on all company's interests, and on the Offeror's strategic plans for the Offeree company and likely repercussions on employees and business locations.

The passivity rule's purpose is to give the Target shareholders, as opposed to the Target management, the right to decide on the merits of a hostile Bid and, consequently, whether to adopt post-Bid defences against the Bidder.

Indeed, if a hostileBid occurs, in the absence of the passivity rule, managers of the

Target company might take post-Bid defensive measures against the Offeror in order to protect their own interests, thus depriving the Target shareholders of the benefits of such Bid.
According to article 12, Member States can opt-out of the passivity rule.

3.8 Break-through rule

Article 11 seeks to override a number of pre-defensive measures that may be adopted by Target companies in advance, in order to prevent or complicate the future acquisition of their shares (e.g. restrictions on the transfer of shares contained in the company's articles of association), or the exercise of control in the shareholders' general meeting (e.g. voting restrictions, shares with multiple voting rights).
Member States shall ensure that, once a Bid has been publicised and during the acceptance period of the Bid, any restriction on the transfer of securities provided for in the articles of association of the Offeree company (or in contractual agreements between the Offeree company and holders of its securities) shall not apply vis-á-vis the Offeror.
Article 11 also requires that, in the same period, any restrictions on voting rights (in the articles of association of the Offeree or contractual arrangements) cease to have effect when the shareholders' general meeting of the Offeree company decides on any offensive measures under Article 9 (post-Bid defences) and multiple voting securities shall be limited to one vote each only.
If the Offeror, following a successful Bid, holds at least 75% of the capital carrying

voting rights of a company, then no restrictions on the transfer of securities or on voting rights, nor any extraordinary shareholders' rights concerning the appointment or removal of board members provided for in the articles of association of the Offeree company, shall apply. Multiple voting securities are limited to one vote each only at the first shareholders' general meeting , called by the Offeror after the closure of the Bid in order to amend the articles of association or to remove or appoint board members.

To that end, the Offeror shall have the right to convene a shareholders' general meeting at short notice, provided that such general meeting does not take place within two weeks of notification.

In case of breaking through any of the above restrictions, shareholders' rights are removed, so an equitable compensation shall be provided for any loss suffered by the holders of those rights.

The break-through rule facilitates transfers of control which otherwise would be impossible because of the opposition by a Target shareholder holding a majority of voting shares.

Under Article 12 Member States have the possibility to opt-out of this provision.

3.9 Optional arrangements

Article 12, para. 1 to 3, makes the application of passivity and breakthrough rules optional by permitting at a primary level Member States to opt out from the application of Articles 9 (passivity rule) and/or 11 (break-through rule), and, nevertheless, to grant companies, which have their registered office in their territories, the option (which shall be reversible) to apply the above two rules, if they want.The decision of the Offeree company to opt in shall be made by the shareholders' general meeting in accordance with the law of the Member State in which such company has its registered office and in accordance with the rules applicable to amendment of the articles of association. The decision shall be communicated to the Supervisory Authority of the Member State in which the company has its registered office and to all the Supervisory Authorities of Member States in which the securities are admitted to trading on regulated markets or where such admission has been requested.

Furthermore, at a secondary level, Article 12, para. 3, introduced the principle of "reciprocity rule". Under conditions determined by national law, Member States may allow their companies, which apply Articles 9 and/or 11, to be exempted from the application of those rules if they become the subject of a Bid launched by a company that does not apply the same provisions, or by a company controlled, directly or indirectly, by the latter, pursuant to Article 1 of Directive 83/349/EEC.

The purpose of this provision is to prevent Bidders from circumventing the rule by incorporating special Takeover vehicles, but in practice it means that any European

public company, controlled by a private person or by a non-EU entity, could be at a disadvantage in a Takeover battle. For example, if there are two competing Bids from a U.S. Bidder and a EU Bidder on the same Target company, and both the Target and the EU Bidder have opted in to Article 9 and are applying the reciprocity rule, the Target company might take defensive measures against the U.S. Bidder but not against the EU Bidder.

In conclusion, Member States have two choices:

- either to opt-in/opt-out of Articles 9 and/or 11; or
- to allow reciprocity.

If Member States implement the Directive and make their approaches to reciprocity known, then a level playing field between different Offerors for the same Target company could be achieved as hoped.

Generally, the reciprocity rule helps to compensate the differences that the "opt-in/opt-out" rules in the Directive can generate amongst the different legislations of EU Member States.

3.10 Other conduct

As provided for by paragraph 22 of the Preamble and Article 13 of the Directive, ("Other rules applicable to the conduct of Bids"), Member States shall also lay down rules dealing with:

- the lapsing of Bids;
- the revision of Bids;
- competing Bids;
- the disclosure of the result of Bids;
- the irrevocability of Bids and conditions permitted;
- sanctions to be applied for infringement of Takeover rules.

The impact of the Directive on European legislations - analysis of main countries' legislations

4.

The impact of the Directive on European countries' national regulations is focused on the following matters:

- transposition of the Directive;
- Supervisory Authority;
- mutual recognition of offer documents;
- disclosure;
- threshold for mandatory Bids;
- period of acceptance;
- competing Bids;
- price determination;
- obligation to apply the board passivity rule (art. 9);
- obligation to apply the break-through rule (art. 11);
- reciprocity (art. 12);
- threshold for squeeze-out and sell-out rights.

4.1 Austria

Transposition of the Directive

The Takeover Directive was implemented by Law 75/2006 which amended the Federal Act on Takeover bids (*ÜbG*).

Supervisory Authority

The Austrian Supervisory Authority is the Austrian Takeover Commission (*Übernahmekommission*), which is competent for all matters regulated in the Federal Act.

It may impose the notification obligation for any such statements prior to publication of the offer.

The Takeover Commission shall also supervise the application of the Federal Act and issue all official notices containing regulations. It may, at any time, initiate proceedings of its own motion. It shall also have the power to draw up opinions, provide with advice and offer its offices in the amicable settlement of disputes concerning the application of the Federal Act.

The Takeover Commission and the Financial Markets Authority shall collaborate with the supervisory bodies and other bodies charged with the supervision of the capital markets of the other Member States of the European Community and Member States of the EEA, in particular with the competent bodies pursuant to Directives 93/22/EEA, 2001/34/EC, 2003/6/EC and 2003/71/EC, and shall provide such bodies with any information required for the application of this Federal Act or under any other provisions passed as a consequence of Directive 2004/25/EC.

Mutual recognition of offer documents

Pursuant to article 27c, para. (3), of the Federal Act the Takeover Commission may demand inclusion of additional information in the bidding documents, if this information is specific to the domestic equities market and it refers to formalities to be observed when accepting the Bid and to receipt of the payment due at the time the Bid is closed, or if it refers to the taxation treatment of shareholders being offered a payment. Furthermore, the Takeover Commission may demand the translation of the bidding documents into German or into English.

Disclosure

As provided for by article 5, paras. (2) and (3) of the Federal Act, when the Offeror considers to make or intends to make a Bid or to act in such a way that it will be under an obligation to make a Bid, he/she shall immediately disclose the matter and inform the administrative organs of the Offeree company if there is a substantial movement in the price of the equities or rumours and speculations concerning the Bid arise and there are reasonable grounds for concluding that these originate in the preparation of the Bid, the plans of the Offeror to make such a Bid or in the purchase of shares by the Offeror.

In any case, the Offeror shall disclose immediately and inform the administrative bodies of the Offeree company of the fact that:

- his/her management and supervisory board have decided to make a Bid; or
- circumstances have arisen which trigger his/her obligation to make a Bid.

Pursuant to article 7 of the Federal Act, the Offeror shall draw up the offer document containing at least the information provided for by article 7 itself.

The Offeror shall observe the following rules:

- the decision to make a Bid shall be announced only after he/she ensures that can fulfil any cash payment in full, if such is offered, and after taking all reasonable measures to secure the execution of another type of payment;
- insider dealing and the creation of false markets are to be avoided;
- information and statements shall be prepared carefully accurately and completely; incorrect or misleading information and statements shall be prohibited.

Under article 9 of the Federal Act, the Offeror shall appoint a suitably qualified, independent expert to provide with advice throughout the proceedings and to examine the offer documents. The expert shall verify that the offer documents are complete and in compliance with the law, in particular regarding the price offered. the Offeror shall draw up a written report and summarize the results of his/her examination in a concluding finding which shall include a declaration that the Offeror possesses the funds to fulfil the consideration in full.

According to article 10 of the Federal Act, the Offeror shall notify the Takeover Commission of the Bid together with the offer documents and the expert's report. After disclosing his/her intention to make a Bid, the Offeror shall notify the Bid to the Takeover Commission within ten trading days. The Takeover Commission may, upon application by the Offeror, extend this period to a maximum of forty trading days. The Takeover Commission shall confirm receipt of notification and indicate the date of receipt.

An Offeror having the registered office, domicile or habitual place of residence

abroad shall, upon making the notification, appoint an agent authorized to accept service of documents having its principal place of business, registered office or branch in Austria.

The Takeover Commission shall give its opinion on the offer documents in writing and may supplement or alter its opinion; it may determine the unlawfulness of the Bid or of the offer documents by issuing an official notice and prohibit the publication of the offer documents and the execution of the Bid.

Pursuant to article 11 of the Federal Act, the Offeror shall publish the offer documents and the expert's findings no earlier than the twelfth and not later than the fifteenth trading day after receipt by the Takeover Commission, unless the Takeover Commission has prohibited the publication of the Bid.

Publication shall be made through a newspaper with nationwide distribution or in the form of a brochure made available free of charge to the investing public by the Offeree company at its registered office and by bodies obligated to provide with the payment. If the documents are not published in full in the Official Gazette of Wiener Zeitung, such Official Gazette shall publish where the documents can be obtained or are published. If the offer documents have been published in one or more newspapers with nationwide circulation, all further Offeror's announcements concerning the Bid shall be published in the same manner. If the complete offer documents have been published only by way of a brochure, the publication in the Official Gazette of the Wiener Zeitung shall be sufficient for further announcements. If the Offeror or the Offeree company have a website, then the documents shall also be placed on their website without delay and in a manner that makes them easy to find.

The Offeror shall, before publication, bring the offer documents specified in the first sentence of para. 1 to the attention of the management board and the chairperson and the vice-chairperson of the supervisory board of the Offeree company.

The Offeror and the management board of the Offeree company shall immediately inform their respective works councils of the disclosures and transmit the offer documents immediately upon receipt. The management board of the Offeree company shall inform its works council of the possibility of making a statement at the time it sends it the first notification, and of the planned time of the announcement at the time it hands over the offer documents.

Under article 14 of the Federal Act, the management board and the supervisory board of the Offeree company shall publish a response stating reasons on the Bid immediately after the publication of the offer documents. The expert shall prepare an evaluation of the Bid, of the response of the management board of the Offeree company and of the statement of the supervisory board in writing. The management board shall publish its response together with any response of both the supervisory board and the works council as well as the report of the expert within ten exchange trading days of publication of the offer documents, but at the latest five exchange trading days prior to the expiry of the acceptance period. The response shall be notified to the Takeover Commission and simultaneously sent to the works council before being disclosed to the public.

Under article 19, paras. (2) and (3), of the Federal Act, the Offeror shall publish the result of the Bid immediately after the end of the period for accepting the Bid. The acceptance period is prolonged for those holders of equities who have not yet

accepted the Bid by three months as of the day of the announcement in the following cases:

- a mandatory Bid has been made; or
- the Offeror owns more than 90% of the share capital with voting rights after a voluntary bid; or
- a voluntary Bid is contingent on the attainment of a certain minimum number of equities and this condition has been met.

Thresholds for mandatory Bids

According to article 22 of the Federal Act, conditions triggering the obligation to make a mandatory Bid are:

- control through acquisition of more than 30% of voting rights in a Target company held, directly or indirectly, by an individual or legal entity;
- indirect control through other rights conferring significant influence in the Target company;
- creation of controlling stake through the acquisition of further 2% of voting rights to a controlling stake within twelve months, if the Bidder does not have the majority of voting rights.

Period of acceptance

As provided for by article 19, para. (1), of the Federal Act, the period for accepting the Bid shall be no less than two weeks and no longer than ten weeks following the publication of Bid documents.

Pursuant to article 19, para. (1b), of the Federal Act the Offeror has the right to

extend the original Bid but no extension shall be allowed if the Offeror has declared that, in no case, he/she would prolong the Bid; however, this prohibition shall not apply if there is a competing Bid.

Competing Bids

The Federal Act provides that when a competing Bid is published, holders of equities shall be entitled to withdraw from any previous declarations of acceptance of the original Bid until at the latest four exchange trading days before expiry of the original acceptance period. If several Bids have been made and one has been improved, the shareholders have the right to withdraw from previous declarations of acceptance for the other Bids.

Under article 19, para. (1c), of the Federal Act, if a competing Bid is made, then the acceptance period of that Bid shall be at least two weeks and shall not end before the expiry of the acceptance period of the original Bid. By submitting a competing Bid, the acceptance periods are prolonged for all Bids already made until the end of the acceptance period for the competing Bid, unless the original Offeror has declared that he/she will withdraw it in the event a more favourable competing Bid is made.

According to article 19, para. (1d), of the Federal Act, the acceptance period for all Bids for an Offeree company shall end at the latest ten weeks after the start of the period of acceptance of the first Bid. If there are competing Bids, the Takeover Commission may grant an appropriate extension of the acceptance period to more than ten weeks if the business of the Offeree company is not unduly hindered.

Price determination

Pursuant to article 26 of the Federal Act, the price of a mandatory Bid, or a voluntary Bid launched to acquire a controlling interest in a company, shall not be less than the highest consideration paid or agreed to pay for those shares of the Offeree company or any parties acting in concert with it in the twelve months preceding the announcement of the Bid. Moreover, the price shall correspond at least to the average exchange price weighted by the respective trading volumes of the equities in the six months before the day on which the intention to make a Bid was announced.

Obligation to apply the board passivity rule (art. 9)

The Austrian legal order provides for the mandatory application of the passivity rule. Pursuant to article 12 of the Federal Act, the management board and supervisory board of the Offeree company may not take any measures likely to deprive shareholders of the opportunity to make a free and informed decision on the Bid. As of the time at which the Offeree company becomes aware of the Offeror's intention to make a Bid until the publication of the results, and also if the Takeover goes ahead, until the Bid has been completed, the management board and the supervisory board of the Offeree company shall require the approval of the shareholders' general meeting for adopting concrete measures that might prevent the Bid, with the exception of the search for competing Bids. This applies especially to the issuance of equities by which the Offeror can be prevented from acquiring a controlling interest in the Offeree company.

Furthermore, decisions which are taken by the management board and, if applicable, by the supervisory board of the Offeree company before the time when the Offeree company becomes aware of the Offeror's intention to make a Bid and until the publication of the results, and which had not even been implemented in part up to that time, shall require the approval of the shareholders' general meeting if such measures do not form part of Offeree company's normal business and if their implementation could serve to frustrate the Bid. Measures to which the administrative bodies of the Offeree company had already been committed at the time mentioned above shall not require any approval.

Obligation to apply the break-through rule (art. 11)

The Austrian legal order does not provide for the mandatory application of the break-through rule.

Notwithstanding it, according to article 27 of the Federal Act, Austrian companies may include restrictions on the transfer of shares in their articles of association and memorandum.

Anyway, restrictions on transferability of shares, provided for by the articles of association, shall not be effective if:

- shares are to be transferred to the Bidder or a party acting in concert with him/her between the time of publication of the bidding documents and the date foreseen for the settlement of the Bid; and
- restrictions to transferability are contained in a contract between shareholders of the Offeree company or between the Offeree company and its shareholders if such agreement has been reached after 30th March, 2004.

Furthermore, if provided for in the articles of association, following the announcement of a Takeover bid where the Bidder holds at least 75% or more of the share capital with voting rights in the Target company after a Bid, the Bidder is entitled to convene a general meeting of shareholders, at the earliest two weeks after the announcement. The voting right restrictions shall not apply to any shareholders' general meeting held within the first six months after the date defined in the bidding documents for the settlement of the Bid if the articles of association and memorandum are to be changed or if a member of the supervisory board is to be appointed or such membership cancelled. Such general shareholders' meetings may dismiss members from the supervisory board appointed by individual shareholders or appoint new members to the supervisory board without individual shareholders having the right to appoint members; such rights to appoint members can be abolished by changes to the articles of association and memorandum without the consent of the concerned shareholder. Restrictions on transferability of shares contained in the articles of association and memorandum shall not apply between the time a general meeting is convened and the time it ends if the shares are to be transferred to the Bidder or to a party acting in concert with him/her.

Reciprocity (art. 12)

The Austrian legal order does not provide for the application of the reciprocity rule.

Threshold for squeeze-out and for sell-out rights

The threshold for squeeze-out and for sell-out right is 90% of voting capital and voting rights of the Target company.

4.2 Belgium

Transposition of the Directive

The Takeover Directive was implemented by the Law of 1st April, 2007 on public Takeovers ("*Loi relative aux offers publiques d'acquisition*") and by the Royal Decree of 27th April, 2007 on Public Takeovers. The main parts of this new legislation entered into force on 1st September, 2007. An official coordination ("*Coordination officieuse*") of both the Law of 1st April, 2007 and the Royal Decree of 27th April, 2007 was published on the Belgian Supervisory Authority's website [7]. These rules apply to any company whose registered office is situated in Belgium and of which at least part of the voting securities are admitted to trading on a regulated market or on a Multilateral Trading Facility (e.g. Eurolist by Euronext Brussels, Alternext or the Free Market).

Supervisory Authority

The Belgian Supervisory Authority is the CBFA (Banking, Finance and Insurance Commission) which, in accordance to articles 35 and 36 of the above mentioned "*Coordination officieuse*":

- supervises the application of law provisions;
- may concede reasoned derogations of Takeovers' regulation;
- supervises the regularity of Bid procedure, in particular of actions which could frustrate a Bid.

[7] See link at: http://www.cbfa.be/fr/oa/oaa/wg/pdf/law_01-04-2007.pdf

The CBFA has also the power to take the necessary measures and to order injunctions in order to ensure the correct application of law provisions. Indeed, the CBFA may:

- order to stop any verified irregularities, when it realizes that an activity or omission has been made against law or regulatory provisions;
- prohibit people who are responsible for having made activities against law or regulatory provisions to benefit of the advantages derived from such activities;
- request further information and documentation;
- order the Offeror to act in such a way which shall not mislead the public;
- suspend an Offer or the publication of the announcement of an Offer, for ten consecutives working days, if there are grounds to believe that a violation of the Law of 1st April, 2007 or its regulatory provisions has been made;
- prohibit an Offer or the publication of the announcement of an Offer, if it ascertains or there are grounds to suspect violations of the Law of 1st April, 2007 or its regulatory provisions;
- suspend, until ten consecutives working days, the disclosure of promotional communications or other documents and announcements;
- prohibit or order to withdraw the above mentioned communications;
- order to a party to the Offer to public a rectification of promotional communications, or of any documents or announcements disclosed by violating law provisions;
- in case of non-fulfilment by a party to the Offer within the assigned term, the CBFA itself shall publish the above mentioned rectifications;

- make all its decisions public, unless the disclosure of such decisions risks to disturb financial markets heavily or to cause a disproportionate prejudice to the parties to the Offer;
- make public that a party to the Offer did not fulfil its obligations, unless the disclosure of such non-fulfilment risks to disturb financial markets heavily or to cause a disproportionate prejudice to the parties to the Offer;
- make inspections on-site, acquaint and make copy of documents and files, and access to any informatic systems, even if investigation powers may not extend to private places;
- order to anyone who does not comply with the obligation to launch a Bid to fulfil this obligation;
- order the Target company to draw up a reply document in case of omission of such obligation.

Mutual recognition of offer documents

Pursuant to article 20 of the "*Coordination officieuse*", the Offeror may ask for recognition of the offer document in Belgium if it has been previously approved by the competent authority of another Member State as per the Directive.

In order to obtain such recognition, the Offeror shall send the CBFA a dossier including the following documentation:

- the offer document to be recognised;
- a translation into French and Dutch, or into a commonly used language in the international financial environment acceptable to the CBFA (the translation shall be made under the responsibility of the Offeror);

- the confirmation of the approval of the offer document by the home Supervisory Authority.

The CBFA may request information relating to the Belgian financial markets or the formalities to be complied with for Bid acceptance and receipt of payment due at the closing of the Bid as well as the taxes or charges applicable to the payment offered to the securities' holders.

Within ten working days from the filing of the above mentioned dossier, the CBFA shall notify the decision concerning the recognition of the offer document.

Disclosure

Pursuant to article 5, of the Royal Decree of 27th April, 2007, the Offeror shall publish an announcement regarding his/her intention to launch an Offer and draw up an offer document to be submitted to the CBFA.

According to article 8 of the Royal Decree of 27th April, 2007, when the well-functioning of the market requires it, the CBFA may request a potential Bidder, whom it has reasonable basis to believe is launching a public Takeover, to make his/her intentions public without delay (the so-called "put-up or shut-up" orders, like in France). The CBFA may concede a delay of ten days after which the potential Bidder: (i) shall publish an announcement regarding his/her intention to launch a Bid pursuant to the above mentioned article 5; or (ii) if the potential Bidder states that he/she has no intention of filing a Bid, or if the timetable established by the AMF is not respected, then he/she will be banned from making a Bid for those securities for a following period of six months, unless this change can be justified by extraordinary circumstances.

After the approval of the CBFA, the offer document shall be made public through at least one of the following modalities:

- insertion in at least one daily newspaper with nationwide circulation;
- a printed form to be made available, free of charge, to the public at the offices of the financial intermediaries appointed by the Offeror;
- in electronic form on the Offeror's website and, if applicable, on the website of the financial intermediaries appointed by the Offeror.

The offer document shall be also made available, free of charge, to the securities' holders of the Target company.

Under articles 22 and 23 of the "*Coordination officieuse*", the board of directors of the Target company shall draw up a reply document (called memorandum) which shall contain at least:

- remarks of the Target company concerning the offer document;
- articles of association's provisions which imply limitations on the transferability of securities carrying voting rights or securities which afford voting rights as well as a list of preferential votes which would be given to some shareholders in case of acquisition of such securities, insofar as the board of directors of the Target company has knowledge of them;
- a reasoned opinion on the Bid.

The memorandum shall be submitted to the CBFA for approval. It shall be drawn up in French and Dutch even if the CBFA may accept, upon request of the Target company, that the memorandum is drawn up in one national language only.

After approval, the memorandum shall be published by the Target company in the

same way as the offer document or it may be attached, as an annex to the offer document itself, by the Offeror.

With reference to promotional communications, article 31 of the "*Coordination officieuse*", provides that any announcements relating to the Offer, which might influence the Bid acceptance , as well as other documents disclosed in the Belgian territory by the Offeror or by its intermediaries, and by the Target company or by its intermediaries, shall:

- report that both offer document and memorandum have been or will be published and where securities' holders can consult these documents;
- not be misleading or incorrect;
- correspond to information contained in the offer document.

Pursuant to article 42 of the "*Coordination officieuse*", the boards of directors of the Offeror and the Target company shall inform their respective representatives of employees or, if there are no such representatives, the employees themselves, of the offer.

Moreover, it shall be clear that the above mentioned announcements are promotional.

The Offeror shall also publish an announcement with the results of the Bid.

Thresholds for mandatory Bids

Under article 5 of the "*Coordination officieuse*", any natural or legal persons who, directly or indirectly, either individually or in concert, holds, as a result of a purchase, more than 30% of the voting securities in a company whose registered office is in Belgium and of which at least part of the voting securities are admitted

to trading on a regulated market in the EEA (included Eurolist by Euronext Brussels), or on a Multilateral Trading Facility (Alternext or the Free Market), shall, by way of a mandatory Bid, launch an Offer for all securities of the Target company.

Article 52 of the Royal Decree of 27th April, 2007 provides for the following exemptions from the mandatory Takeover bid:

- in the case of an acquisition resulting from a voluntary Takeover bid;
- in the case of securities' transfers between affiliated companies;
- when there is another larger shareholder (who holds more than 30% of the securities) or if another person has control of the company;
- if the purpose of the acquisition is to increase the capital of a company in difficulties;
- if the acquisition is made through a merger, provided that the shareholder holding more than 30% of the securities of the absorbing company did not exercised the majority of the voting rights at the shareholders' general meeting of the absorbed company which approved the merger;
- if the threshold is exceeded by no more than 2%, provided that the excess shares are transferred within twelve months after the purchase and the voting rights attached to the excess shares are not exercised;
- if the 30% threshold is exceeded as a consequence of inheritance or division of marital assets, donation, etc..

Period of Acceptance

The period for accepting the Offer may not be less than two weeks nor more than ten weeks after the publication of the offer document.

Under article 56 of the Royal Decree of 27th April, 2007, the acceptance period shall start at the latest the fourteenth working day after the date in which the obligation to launch a Bid has arisen.

Competing Bids

Any competing Bid should be notified to the CBFA within, at the latest, two days prior to closing of the last Bid.

Price determination

According to article 53 of the Royal Decree of 27th April, 2007, the Offer price shall be the higher of:

- the highest price paid by the Bidder (or a person acting in concert with him/her) to acquire securities during the twelve months preceding the announcement of the mandatory Bid; and
- the weighted average price per share on the relevant financial market during the last thirty days preceding the date on which the 30% threshold was reached.

The CBFA may impose conditions if the price is not significant.

Obligation to apply the board passivity rule (art. 9)

The Belgian legal order does not provide for the mandatory application of the passivity rule.

However, pursuant to article 46, para. 1, no. 1 and 2, of the "*Coordination officieuse*", the articles of association of a company which has its registered office in Belgium and whose securities carrying voting rights are admitted to trading on a regulated market, may provide that:

- during the offer period, the board of directors and the body to which the board of directors delegated part of its powers, will not take actions in order to frustrate a Bid if they have not been specifically and previously authorized by the shareholders' general meeting to do so;
- decisions which could frustrate a Bid made before the offer period started by the board of directors and the body to which the board of directors delegated part of its powers, and that have not been yet put into practice or have been put into practice partially, shall be approved or confirmed by the shareholders' general meeting unless these decisions have been taken in the ordinary course of business.

According to article 46 of the Law of the "*Coordination officieuse*", the above mentioned statutory provisions are applicable since the beginning of the offer period, or since the receipt of the Offeror's decision to launch a Bid has been communicated to the Target company's board of directors.

In order to obtain the above mentioned preliminary authorization, approval or confirmation, the shareholders' general meeting may be held two weeks after its convening.

Pursuant to article 46, para. 3, of the Law of the "*Coordination officieuse*", decisions made in accordance to article 46, para. 1, shall be notified without delay to the CBFA and to Supervisory Authorities of all other Member States in which company's securities are admitted to trading on a regulated market or in which a request for this purpose has been filed .

Obligation to apply the break-through rule (art. 11)

The Belgian legal order does not provide for the mandatory application of the break-through rule.

Pursuant to article 46, para. 1, no. 3, 4 and 5, of the "*Coordination officieuse*", the articles of association of a company which has its registered office in Belgium and whose securities carrying voting rights are admitted to trading on a regulated market, may provide that:

- restrictions concerning the transfer of securities carrying voting rights or securities which give access to voting rights, provided for by articles of association or existing agreements between the Target and its shareholders, shall not apply vis-á-vis the Offeror during the Takeover acceptance period;
- restrictions concerning the transfer of securities carrying voting rights or securities which give access to voting rights, provided for by articles of association or agreements between the Target and its shareholders, shall not apply at the shareholders' general meeting convened during the offer period to adopt defensive measures;
- if, as a result of a Bid, the Offeror holds 75% or more of the capital carrying voting rights, then restrictions concerning the transfer of securities carrying

voting rights or securities which give access to voting rights, including multiple voting rights and the rights of shareholders concerning the appointment or removal of board members, shall not apply at the first general meeting of shareholders, convened by the Offeror not earlier than two weeks and not later than two months after the publication of the results of the Bid in order to modify the articles of association or to appoint or revoke board members.

Under article 46, para. 2, of the "*Coordination officieuse*", shareholders who are deprived of their rights by virtue of the above mentioned statutory provisions are entitled to a fair indemnification. The amount of such compensation is to be determined by the Court of Appeal.

Reciprocity (art. 12)

The Belgian legal order provides for the application of the reciprocity rule.

According to article 47 of the "*Coordination officieuse*", a company which voluntarily opted in to the passivity and break-through rules by virtue of article 46 may provide in its articles of association that, in case of a Takeover launched against it by another company which is not subject to equivalent provisions, it has the right to disapply those rules.

Decisions made by the company and provisions of the articles of association or of agreements which concern the transfer of securities or voting rights shall be regulated in such case by Code of Companies' rules and by company's articles of association and relevant agreements.

This conduct is provided for in the articles of association through an authorization

of shareholders' general meeting which shall be obtained not earlier than eighteen months prior to publication of the Takeover announcement .
Article 46, para. 1, is also applicable when the Offer is launched by a company which is, directly o indirectly, under control of another company which does not apply article 9, paras. 2 and 3, and/or article 11 of Directive 2004/25/EC.

Threshold for squeeze-out and for sell-out rights

The threshold for squeeze-out and for sell-out rights is 95% of securities carrying voting rights of the Target company.

4.3 Denmark

Transposition of the Directive

The Takeover Directive was implemented by the Securities Trading Act (which was consolidated by Consolidated Act no. 214 of 2nd April, 2008), and by the Executive Order on Takeover bids no. 1228 of 22nd October, 2007 issued by the Danish Financial Supervisory Authority.

Supervisory Authority

The Danish Supervisory Authority is the FSA (*Finanstilsynet* - Financial Supervisory Authority) which, pursuant to Section 18 of the Executive Order on Takeover bids no. 1228 of 22nd October, 2007, has the task to supervise Takeover bids.

Mutual recognition of offer documents

Even though Section 6, subsection 2, of the Directive concerning mutual recognition of offer documents has not yet been directly transposed into a specific provision, it is possible to evict by the set of rules on Takeover bids that the offer document already approved by a Supervisory Authority shall be recognised by the Danish FSA.

Disclosure

Pursuant to Section 4 of the Executive Order on Takeover bids no. 1228 of 22nd October, 2007, the Offeror shall immediately publish an announcement of a decision to make a voluntary Bid.

The same rule is established for the acquirer of a controlling shareholding which

occasions an obligation to make a Bid. In fact, he/she shall publish an announcement of this immediately after acquisition. Such publication shall be made via electronic media in such a manner that the announcement reaches the public in the countries in which the the Offeree company's shares are admitted to trading on a regulated market or an alternative market.

The Offeror shall, not later than publication, send the announcement to the Danish FSA and the regulated market or the alternative market on which the shares are admitted to trading. The Danish FSA shall publish the announcement on its website. Immediately after publication of the announcement, the boards of directors of the Offeree company and the acquirer/Offeror shall inform their respective employees' representatives or, where there are no such representatives, the employees themselves.

Section 5 of the Executive Order on Takeover bids no. 1228 of 22nd October, 2007 contains detailed provisions regarding form and content of the offer document which shall be drawn up by the Offeror.

According to Section 14 of the Executive Order on Takeover bids no. 1228 of 22nd October, 2007, the board of directors of the Offeree company shall draw up and make public (before expiry of the first half of the Bid period) a reply document setting out its opinion of the Bid and reasons on which it is based, including its views on the effects of implementation of the Bid on all company's interests and specifically employment, and on the Offeror's strategic plans for the Offeree company and their likely repercussions on employment and locations of the company's places of business as set out in the offer document.

At the same time as publication of the document, the board of the Offeree company shall communicate its opinion to the representatives of its employees or, where there are no such representatives, to the employees themselves. Where the board of the Offeree company receives a separated statement from the representatives of its employees on the effects of the Bid on employment, such statement shall be made public immediately.

Immediately after publication, the Offeree company shall publish the document on its website.

Pursuant to Section 13 of the Executive Order on Takeover bids no. 1228 of 22nd October, 2007, the Offeror is obliged to make public the result of a Bid at the latest three days after the offer period has expired.

Thresholds for mandatory Bids

According to Section 2 of the Executive Order on Takeover bids no. 1228 of 22nd October, 2007, a Takeover bid is mandatory if a person who acquires shares of a company becomes:

- the holder of the majority of voting rights of such company;
- entitled to appoint or dismiss a majority of the company's board members;
- entitled to exercise a controlling influence on the company under the articles of association or other agreements with said company;
- able to exercise influence over the majority of the voting rights of the company on the basis of agreements with other shareholders;
- entitled to exercise a controlling influence on the company and becomes the holder of more than one-third of the voting rights of said company.

Period of Acceptance

Pursuant to Section 6 of the Executive Order on Takeover bids no. 1228 of 22nd October, 2007, the acceptance period of the Bid shall be not less than four weeks and no more than ten weeks from the date of publication of the offer document.

Competing Bids

Section 16 of the Executive Order on Takeover bids no. 1228 of 22nd October, 2007 provides that a competing Bid shall be submitted before expiry of the offer period for the existing Bid with the latest date of expiry. In the event that the original Offeror does not withdraw his/her Bid, the offer period of the original Bid shall be extended automatically to the date of expiry of the competing Bid. This automatic extension of the original bid period shall be made public.

Price determination

Pursuant to Section 8 of the Executive Order on Takeover bids no. 1228 of 22nd October, 2007, the minimum price to be offered shall be equal to the highest price the Offeror has paid for acquiring shares in the six months preceding the date the Offer is made.

The Danish FSA may adjust the offered price upwards or downwards if:

- the price of the shares has been manipulated; or
- the price has been affected by extraordinary events; or
- the Bid is made to enable a company in difficulty to be rescued; or
- the price set circumvents the principle of equality of treatment; or

- the Bid price is significantly lower than the market price;

When setting the Bid price, the Danish FSA may apply:

- the highest price paid by the Offeror to acquire shares in the twelve months preceding the announcement of the Bid; or
- the average price over the twelve months preceding the announcement of the Bid; or
- the break-up value of the Offeree company; or
- other objective criteria.

Obligation to apply the board passivity rule (art. 9)

The Danish legal order does not provide for the mandatory application of the passivity rule.

Nothwithstanding it, pursuant to Section 81c., subsection 1, of the amended Danish Public Companies Act, the shareholders' general meeting may resolve to introduce a scheme whereby the board of directors of a company, whose shares are the object of a Takeover bid, shall obtain the approval of the shareholders' general meeting itself before taking any measures which may frustrate a Bid, except for a decision to consider alternative Bids.

Pursuant to Section 81c., subsection 3, of the amended Danish Public Companies Act, the approval of the shareholders' general meeting shall be required no later than the date on which the board of directors or management board of the company have received information on publication of the Bid and until the result of the Bid is available and has been published, or when the Bid no longer applies. Approval by the shareholders' general meeting shall be obtained after this date regardless of

whether relevant measures were adopted before the board of directors received information about the Takeover bid.
According to Section 81c., subsection 4, of the amended Danish Public Companies Act, even if the articles of association contain different provisions which establish a longer time limit, the board of directors may convene a general meeting with a notice of no less than two weeks in order to obtain approval from the shareholders' general meeting for defensive measures.
Pursuant to Section 81c., subsection 6, of the amended Danish Public Companies Act, the company shall notify the Commerce and Companies Agency as well as the supervisory authorities as soon as possible of the resolution adopted by the shareholders' general meeting under Section 81c., subsection 1, if shares of the company have been admitted to listing or trading on a stock exchange, an authorised market place or a similar regulated market in an EU/EEA country, or if an application for admission or trading has been submitted.

Obligation to apply the break-through rule (art. 11)

The Danish legal order does not provide for the mandatory application of the break-through rule.
Nothwithstanding it, pursuant to Section 81d., subsection 1, of the amended Danish Public Companies Act, the shareholders' general meeting may resolve to introduce a scheme by which special rights or limitations which are linked to the possession of shares or to the individual share are suspended, if the shares of the company become the object of a Takeover bid.
Under Section 81d., subsection 2, of the amended Danish Public Companies Act, the

shareholders' general meeting shall pass the above mentioned resolutions, pursuant to subsection 1 of Section 81d., in accordance with majority voting requirements and additional provisions laid down in the articles of association of the company. The same requirements shall be observed if the resolution is subsequently changed.

According to Section 81d., subsection 3, of the amended Danish Public Companies Act, the company shall notify the Commerce and Companies Agency as well as the supervisory authorities as soon as possible of the resolution by the shareholders' general meeting, if shares of the company have been admitted to listing or trading on a stock exchange, an authorised market place or a similar regulated market in an EU/EEA country, or if an application for admission or trading has been submitted.

Section 81b., subsection 2, of the amended Danish Public Companies Act provides that Section 81d. shall not apply to companies in which the Danish Government owns shares carrying voting rights to which special rights, consistent with the EC Treaty, are linked.

Section 81e., subsection 1, of the amended Danish Public Companies Act provides that the resolution of the shareholders' general meeting on suspension under Section 81d, subsection 1, shall mean that the limitation of the right to transfer or acquire shares, which is laid down in the articles of association of the company or pursuant to an agreement, is not applicable vis-à-vis Bidders during the period in which the Bid is valid (see, however, Section 81f, subsection 1). In the event that the Bidder has stipulated special conditions in the offer document, the suspension of the mentioned limitations shall apply until the Bidder, in accordance with the offer document, has decided whether the Bid can be made.

Pursuant to Section 81e., subsection 2, of the amended Danish Public Companies Act, at the shareholders' general meeting dealt with under Section 81c, the decision on suspension pursuant to Section 81d subsection 1, shall include that:

- limitations on voting rights laid down in the articles of association of the company or pursuant to an agreement are not applicable (see, however, Section 81f., subsection 2), and
- shares to which a greater voting value is ascribed by the articles of association of the company or pursuant to an agreement, are only given voting rights in relation to the shares' proportion of the total capital entitled to vote (see, however, Section 81f., subsection 2).

According to Section 81e., subsection 3, of the amended Danish Public Companies Act, at the shareholders' general meeting dealt with under Section 81g, the decision on suspension pursuant to Section 81d. subsection 1, shall include that:

- limitations on voting rights laid down in the articles of association of the company or pursuant to an agreement are not applicable (see, however, Section 81f.(2)), and
- shares to which a greater voting value is ascribed by the articles of association of the company (see Section 67(1)), or pursuant to an agreement, are only given voting rights in relation to the shares' proportion of the total capital entitled to vote (see, however, Section 81f.(2)), and
- special rights for certain shareholders to appoint members of the board of directors in accordance with the articles of association of the company are not applicable.

Under Section 81f., subsections 1 and 2, of the amended Danish Public Companies Act, agreements on limitations of the right to transfer or acquire shares which were entered into before 31st March 2004 are applicable vis-à-vis Bidders, notwithstanding Section 81d, subsection 1.

Agreements on exercising voting rights which were entered into before 31st March 2004 are applicable at the shareholders' general meetings mentioned in Sections 81c and 81g, notwithstanding provisions contained in Section 81d, subsection 1.

Section 81g of the amended Danish Public Companies Act provides that a Bidder who has acquired 75% or more of the voting capital of a company which has made a decision on suspension pursuant to Section 81d, subsection 1, may convene a shareholders' general meeting after the expiry of the Bid in order to change the articles of association and to appoint or replace members of the board of directors. This first shareholders' general meeting may be convened with no less than two-weeks' notice, even if the articles of association contain different provisions which establish a longer period of notice .

Pursuant to Section 81h., subsections 1 to 4, of the amended Danish Public Companies Act, as regards to companies which have made a decision on suspension pursuant to Section 81d., subsection 1, if the Takeover bid has been completed then the Bidder shall provide a compensation for those shareholders who have suffered a financial loss arising from the misapplication of special rights or limitations on voting rights which, according to the articles of association of the company, are linked to the possession of shares or to the individual share.

The offer document shall contain information on the compensation the Bidder shall

offer to shareholders as well as the basis of calculation of such compensation. Price-setting shall be based on the market value of the relevant shares.
In the event that it is not possible to agree on the size of compensation, it shall be calculated by experts appointed by the Court of the jurisdiction where the company has its registered office. The determination of the experts may be brought before the Court. Proceedings in this matter shall be instituted no later than three months from the date the opinion of the experts on the compensation amount is received. Shareholders shall also be entitled to compensation under subsections 1 to 3 if, during the period from 31st March 2004 to the date of entry into force of this Act, they have entered into an agreement on special rights or limitations on voting rights which are not applicable as a consequence of a Takeover bid.

Reciprocity (art. 12)

The Danish legal order provides for the application of the reciprocity rule.
Under Section 81c., subsection 5, of the amended Danish Public Companies Act, if the company has introduced a scheme on involvement of the shareholders' general meeting (passivity rule) (see subsection 1 of Section 81c.), then said scheme shall only apply if company's shares become the object of a Takeover bid from another company in an EU/EEA country which has introduced a corresponding scheme or which is directly or indirectly controlled by a parent company which has introduced a corresponding scheme.
Pursuant to Section 81e., subsection 4, of the amended Danish Public Companies Act, subsections 1 to 3 of Section 81e (break-through rule) shall only apply if company's shares become the object of a Takeover bid from another company in an

EU/EEA country which has made a corresponding decision on suspension or which is directly or indirectly controlled by a parent company which has made a corresponding decision on suspension of special rights or limitations on voting rights which are linked to the possession of shares or to the individual share.

Threshold for squeeze-out and for sell-out rights

The threshold for squeeze-out and for sell-out right is 90% of shares and voting rights of the Target company.

Pursuant to Section 20e., subsection 1, of the amended Danish Public Companies Act, if a person, submitting an Offer in a Takeover bid, has acquired more than nine-tenths of the shares in a company, which has one or more classes of shares admitted for listing or trading on a stock exchange, an authorized market or a similar regulated market for securities in a Member State of the EU/EEA, and where such majority shareholder holds a corresponding proportion of voting rights, he/she may require company's remaining shareholders to allow their shares to be acquired by him/her. Subject to such decision being made, the aforementioned minority shareholders shall be invited, pursuant to rules governing notices, to convene the annual shareholders' general meeting in order to transfer their shares to the majority shareholder within a period of four weeks. The notice to convene the shareholders' general meeting shall state the terms of redemption and the basis on which the redemption price has been determined.

According to Section 20e., subsection 2, of the amended Danish Public Companies Act, if the person submitting an Offer in a Takeover bid has acquired more than nine-

tenths of the shares of a company, and if that person holds a corresponding proportion of the voting rights of said company, then each of the company's minority shareholders may require that his/her shares be redeemed by the majority shareholder.

Section 20e., subsection 3, of the amended Danish Public Companies Act, provides that rules for setting prices contained in the Act on Securities Trading etc. (*Lov om værdipapirhandel m.v.*) shall apply to redemption pursuant to subsections 1 and 2 unless a minority shareholder requests that the price be set by an expert.

Under Section 20e., subsections 4 to 6, of the amended Danish Public Companies Act, consideration for redemption may be paid in the same form as the consideration offered in the original Takeover bid, or in cash. Minority shareholders may always demand cash for redemption. Pursuant to subsections 1 and 2, the Offeror shall allow minority shareholders to submit to himself/herself the requests for redemption no later than three months after the expiry of the offer period in the Takeover bid. The Commerce and Companies Agency may lay down more rules on redemption of the other shares by the Offeror, including how acquisitions under subsections 1 and 2 are to be calculated.

4.4 Finland

Transposition of the Directive

The Takeover Directive was mainly implemented through amendments to the Finnish Securities Market Act 26.5.1989/495 and to the Act on the Financial Supervision Authority (587/2003).

In particular, Chapter 6 of the Finnish Securities Market Act was modified by Law no. 442 of 8th June, 2006. This law approved the Finnish Government proposal, presented on 9th February, 2006 for the implementation of the Takeover Directive (*Bill HE* 6/2006), and entered into force on 1st of July.

In connection with implementation, further amendments to the existing regulations have been included and primarily incorporated into the Finnish Securities Market Act. Furthermore, provisions of the Limited Liability Companies Act (624/2006, "CA") are applicable to the different stages of a Takeover bid process, especially in respect of the actions of the Target company and its management.

Supervisory Authority

The Supervisory Authority in Finland is the Finnish Financial Supervision Authority (FIN-FSA).

Chapter 6, Section 17, of the Finnish Market Securities Act also provides that the Takeover Committee of the Central Chamber of Commerce in Finland issues recommendations and opinions to promote compliance with good securities-markets practice, which shall relate to actions of the Offeree company's management regarding a Takeover bid and contractual structures relating to

maintenance of control, or which shall provide direction for corporate-law procedures to be complied with in company acquisition situations.
The Committee may also, on application, issue recommendations for resolutions regarding individual issues relating to the recommendations themselves.

Mutual recognition of offer documents

Chapter 6, Section 4, of the Finnish Market Securities Act provides that the Financial Supervisory Authority shall recognize, as an offer document, a prospectus which is approved by a competent authority in a State belonging to the European Economic Area and which fulfils the criteria set for an offer document. Recognition procedure and translation of the offer document into Finnish or Swedish and additional information to be included therein shall be provided for by a Decree of the Ministry of Finance.

Disclosure

According to Chapter 6, Section 3, of the Finnish Market Securities Act, the decision to make a Takeover bid shall be made public without delay as well as communicated to the Offeree company, the party in charge of the public trading in question and the Financial Supervision Authority. After the decision is made public, employees' representatives of the Offeree company and of the Offeror company or, where there are no such representatives, employees themselves, shall be informed without delay of this decision.
Prior to entry into force of the Bid and during the time period allowed for acceptance, the Offeror shall make an offer document public and disclose it to the

public as well as communicate it to the Offeree company and the party in charge of the public trading in question.

The offer document may be published only after the Financial Supervisory Authority has approved it.

The Financial Supervisory Authority shall, within five banking days from disclosure of the document for its approval, decide whether the document may be made public.

Under Chapter 6, Section 6, of the Finnish Market Securities Act, the Board of Directors of the Offeree company shall make its opinion on the Bid public and communicate it to the Offeror and the Financial Supervision Authority, as soon as possible after the offer document has been communicated to the Offeree company, however, at the latest five banking days prior to the earliest possible close of the time period allowed for the acceptance of the Bid.

The mentioned opinion shall set out a well-founded assessment on:

- the Bid from the perspective of the Offeree company and securities' holders subject to the Bid; and
- the strategic plans of the Offeror presented in the offer document, and on their likely effects on employment and on the Target company's operations.

The Offeree company shall, when making it public, communicate the opinion to the representatives of its employees or, where there are no such representatives, to the employees themselves.

If, prior to making the opinion public, the Offeree company obtains a separate opinion on the effects of the implementation of the Bid on employment from the

representatives of the employees, this opinion shall be appended to the document. Under Chapter 6, Section 9, of the Finnish Market Securities Act, after the closing of the offer period, the Offeror shall, without delay, make public the portion of ownership and voting rights that he/she may acquire in the Offeree company by acquiring securities offered for sale subject to the Bid and taking into account any securities he/she has otherwise acquired and previously held.

Thresholds for mandatory Bids

Pursuant to Chapter 6, Section 10, of the Market Securities Act, if a shareholder holds three-tenths of the voting rights carried by shares of a company, he/she shall launch a Takeover bid for all the remaining shares and securities entitling to its shares issued by the company. A mandatory Bid shall be launched also if the portion of the shareholder, as a result of other than a mandatory Bid, exceeds one-half of the voting rights carried by the shares of the company after the latter have been admitted to public trading.

The new Finnish regime lowered the threshold for a mandatory Bid from the previous one of two-thirds of the total voting participation of the Offeree company to a threshold of 30% of the total voting participation. In addition, a second threshold of 50% shall apply to shareholders already holding in excess of 30% of the total voting participation. The purpose of this change was to encourage a more active Takeover market in Finland as it removed the unusually high threshold of two-thirds, which stood out as an exception from the Takeover regimes of other European jurisdictions.

Period of Acceptance

The duration of an offer period may be not shorter than three weeks and not longer than ten weeks. However, in certain circumstances, the acceptance period may be more than ten weeks, provided that this does not impede the business operations of the Target company for an unreasonably long period.

The Financial Supervisory Authority may, if requested by the Offeree company, and, where necessary, without hearing the Offeror, order that the time limit allowed for the acceptance of the Takeover bid be extended so that the Offeree company can convene the shareholders' general meeting in order to consider the Bid. The Offeror shall have the right, due to the extension, to waive the Bid within five banking days from being informed of the decision of the Financial Supervisory Authority.

Competing Bids

Under Chapter 6, Section 8, of the Finnish Market Securities Act, when a competing Bid is launched, the original Bidder is entitled to:

- withdraw his/her Bid during the offer period and prior to the close of the Bid;
- extend the time limit allowed for acceptance in order to correspond to the competing Bid; and
- revise the terms of his/her Bid during the time allowed for the acceptance of the first Bid.

The decision on the extension of time allowed for acceptance and the revision of terms shall be made public as well as communicated to the Offeree company, the party in charge of the public trading in question and the Financial Supervision Authority as well as, in the Offeree company and in the undertaking that has made

the Bid, to the representatives of the employees or, where there are no such representatives, to the employees themselves. Provisions of Section 4(6) on supplementing an offer document shall be applied to make the decision public. The board of directors of the Offeree company shall supplement its opinion on the Bid as soon as possible after the competing Bid has been made public, however, at the latest five banking days prior to the earliest possible close of the first Bid.
A party who has accepted the first Bid may, after the competing Bid has been made public, revoke its acceptance during the time allowed for the acceptance of the first Bid.
If a competing Bid has been made, the first Offeror may, during the offer period and prior to the close of the Bid, decide on the lapsing of his/her Bid. The decision on the lapsing shall be made public as well as communicated to the Offeree company, the party in charge of the public trading in question and the Financial Supervision Authority as well as, in the Offeree company and in the undertaking that has made the Bid, to the representatives of the employees or, where there are no such representatives, to the employees themselves.

Price determination

Price determination is regulated pursuant to Chapter 6, Section 11, of the Finnish Market Securities Act, which provides that, with regard to a mandatory Bid, the minimum consideration (defined as "equitable price") shall be the highest price paid for the shares subject to the Bid during the six months preceding the arising of the obligation to launch a Bid by the party under the obligation to launch a Bid.
If the party under the obligation to launch a Bid has not acquired securities subject to the Bid within the six months preceding the arising of the obligation to launch a

Bid, the starting point for determining an equitable price shall be the average of prices paid for the securities subject to the Bid in public trading during the three months preceding the arising of the obligation to launch a Bid weighted with trading volumes. Such price may be derogated from for a special reason.
With regard to a voluntary Bid launched for all the shares and securities entitling to shares issued by the Offeree company, the starting point in determining the consideration shall be the highest price paid for the securities subject to the Bid within the six months preceding the disclosure of the Bid by the Offeror.

Obligation to apply the board passivity rule (art. 9)

The Finnish legal order does not provide for the mandatory application of the passivity rule even though it is expected an opt-in of the mentioned rule.
In fact, as established in the Commission working document on the Directive implementation, Finland has informed the Commission that they opted in to the board neutrality rule. However, in Finland there is no law provision on shareholders' approval of post-bid defensive measures. Finland claims that further self-regulatory rules will complete the existing provisions to remedy to this situation. The Commission has not been informed yet that such rules have been adopted.

Obligation to apply the break-through rule (art. 11)

The Finnish legal order does not provide for the mandatory application of the break-through rule.

Chapter 1, Section 4, of the Limited Liability Companies Act, with reference to the transferability of shares, provides that a share may be transferred and acquired without restrictions, unless otherwise provided for in the articles of association of the Offeree company.

Reciprocity (art. 12)

The Finnish legal order does not provide for the application of the reciprocity rule.

Threshold for squeeze-out and for sell-out rights

As provided for by Chapter 18, Section 1, of the Finnish Limited Liability Companies Act, the threshold for squeeze-out and for sell-out rights is 90% of all shares and voting rights. In fact, a shareholder who holds more than nine-tenths of all shares and votes in the company (majority shareholder) shall have the right to redeem the remaining shareholders' shares at a fair price (right of squeeze-out).
A shareholder whose shares may be redeemed (minority shareholder) shall have the corresponding right to demand that his/her shares be redeemed by the majority shareholder (right of sell-out).
Where the rights of squeeze-out and sell-out have arisen in the context of a voluntary Bid, as referred to in Chapter 6 of the Securities Markets Act, and the redeemer has, on the basis of that Bid, obtained no less than nine-tenths of the shares targeted in the Bid, the price quoted in the purchase offer shall serve as the fair price, unless there is a special reason to determine otherwise.

4.5 France

Transposition of the Directive

The Takeover Directive was implemented by the Law of 31st March, 2006 no. 387 on public tender offers, which amended the Monetary and Financial Code (*Code monétaire et financier or "MFC"*) and the Commercial Code (*Code de Commerce*).
The French Financial Markets Authority completed the transposition of the Directive into French law by adopting the "General Regulations", published on 28th September, 2006.

Supervisory Authority

The French Supervisory Authority is the AMF (*Autoritè des Marchés Financiers*), which is the competent oversight authority for Takeovers when the Target company:

- has its headquarters in France and its securities are admitted to trading on a French regulated market;
- has its headquarters in another EU or EEA (European Economic Area) Member State and its securities were admitted to trading for the first time on a French regulated market or if they were simultaneously admitted to trading for the first time on a regulated market in France and in at least another country, and the AMF was appointed as the competent authority by the Target company itself.

The AMF is also in charge of settling potential disputes (under the supervision of the Paris Court of Appeal) over the "equivalence" of rules (reciprocity) applicable to the Bidder and the Target company. If the "equivalence" of rules is in dispute, the Target company has ten days to present its case and negotiate with the AMF. The AMF

issues its decision within five trading days. In the event of such disputes, the AMF may be expected to postpone the opening of the offer period.

Mutual recognition of offer documents

According to article 231-25 of the AMF General Regulations , if the offer document has been approved by the competent authority of another Member State or a State party to the EEA (European Economic Area) Agreement, then the Offeror and the Target company are exempt from preparing an offer document and a reply document, provided that their application is accompanied by a copy of the offer document approved by the competent authority and translated in French.
This document should be published in accordance with the procedures provided for in the above mentioned General Regulations of the AMF.

Disclosure

Under article L. 433-1 of the Monetary and Financial Code, the AMF may require a potential Bidder, who it reasonably believes is launching a public Takeover, to make its intentions known to the AMF itself (so called "put-up or shut-up" orders), especially if the securities market is experiencing significant fluctuations. This information is made public by means of a news release that shall be submitted to the AMF beforehand.
If the reporting entity confirms its intentions to file a Bid, the AMF fixes the public disclosure and filing timetable for the Bid.
If the reporting entity states that it has no intention of filing a Bid, or if the timetable established by the AMF is not respected, then the entity will be banned from filing

a Bid (or placed in a situation where it is obliged to file a Takeover bid) for a following period of six months, unless this change can be justified by extraordinary circumstances.

Article 231-18 of the AMF General Regulations provides for the content of the draft offer document.

The offer document, where prepared jointly with the Target company, shall also be made available at the offices of the Target company and the organisations engaged as paying agent for the Target company's securities.

The draft offer document shall also be published on the website of the Offeror and, if it was prepared jointly with the Target company, on the website of the Target company as well, provided that these companies have a website.

A copy of the draft offer document shall be sent free of charge to any person who requests it.

On or prior the filing of the draft offer with the AMF, a news release, which shall present the main elements of the draft offer document and explain how the document is being made available, shall be issued by the Offeror.

Pursuant to article 231-17 of the AMF General Regulations , the board of directors of the Target company shall draw up a motivated opinion concerning the Bid (containing benefits and consequences of the Offer for the Target company, and for its shareholders and employees), which shall be made public through a press release.

Under article 231-23 of the General Regulations of AMF, where the draft offer meets the requirements of articles 231-21 and 231-22, the AMF shall publish a reasoned statement of compliance that also constitutes an approval of the offer document.

Pursuant to article 231-26 of the General Regulation of AMF, no later than five trading days after the AMF has issued its statement of compliance, the Target company shall submit a draft reply document to the AMF.

As soon as a draft reply document has been filed, it shall be made available to the public and described in a news release that presents the main elements of the draft reply document.

Under article 231-27 of the General Regulations of AMF, the offer document approved by the AMF shall be distributed in one of the following forms:

a) publication of the document in at least one daily newspaper with nationwide circulation that covers economic and financial news;
b) publication of a summary of the offer document on the same conditions as in a), when the offer document is made available free of charge at the offices of the Offeror and the sponsoring institution(s); or publication of a news release, distributed in accordance to Article 221-3 under the Offeror's responsibility, specifying that the offer document is available as described above.

In all cases, a copy of the document shall be sent free of charge to any person who requests it, and an electronic version of the offer document shall be sent to the AMF for posting on its website.

The Target company sends its reply document to the Offeror as soon as the AMF has issued its approval. The reply document shall also be distributed in one of the above mentioned forms provided for the distribution of the offer document.

When the registered office of the Offeror or sponsoring institution is outside France, the offer document shall be made available at the offices of an investment services

provider in France designated for this purpose by the Offeror or sponsoring institution.
Pursuant to article 231-35 of the AMF General Regulations , the AMF publishes the results of the Offer, which are transmitted to it by the market operator concerned or by the sponsoring institution, as the case may be.

Thresholds for mandatory Bids

Pursuant to article 234-2 of the AMF General Regulations , where a natural or legal person, acting alone or in concert with other people, comes to hold more than one-third (33,33%) of a company's equity securities or voting rights, such person is required, on its own initiative, to inform the AMF immediately thereof and to file a mandatory Offer for all the company's equity securities.
Under article 234-4 of the AMF General Regulations, the AMF may authorise, under terms that are made public, a temporary breach of the above mentioned one-third threshold if the shareholding in excess of the one-third threshold amounts to less than 3% of the share capital and voting rights and lasts no longer than six months. The person(s) concerned shall undertake not to exercise their corresponding voting rights during the period of resale of the securities.
Provisions of article 234-5 of the AMF General Regulations also apply to natural or legal persons, acting alone or in concert, who holding directly or indirectly between one-third (33,33%) and one-half (50%) of the total number of equity securities or voting rights of a listed company, increase such holdings by 2% or more of the company's total equity securities or voting rights within a period of less than twelve consecutive months.

Period of acceptance

The time limit of the Offer, which is twenty-five trading days, may be extended to not more than thirty-five trading days when the Target company does not file an Offer document jointly with the Offer.

Competing Bids

Competing and improved Offers are regulated by article 232-5 et seq. of the AMF General Regulations.

Pursuant to articles 232-5 of the General Regulations of AMF, a competing Offer may be launched at any time after the opening of a Bid but no later than five trading days before its closing.

The previous Offeror may improve the terms of his/her original Bid or the most recent competing Bid until no later than five trading days before the Offer closes.

To be declared compliant by the AMF, a competing public cash Offer or an improved cash Offer shall be at least 2% higher than the price stated in the public cash offer or the previous improved cash Offer.

The Offeror who raises a preceding Offer shall prepare an additional document which provides with information regarding the improved terms of the Bid, to be attached to the offer document, and submit it to the AMF for review. The provided information shall be made public.

The AMF determines the timetable for each competing Bid and ensures that the closing dates of all Offers coincide with the closing date of the last Offer filed.

Price determination

Under article 234-6 of the General Regulations of AMF, the minimum price required for mandatory Bids shall be at least equal to the highest price paid by the Offeror for the Target company's securities in the twelve-month period before the draft offer was filed. A Bidder does not have to offer a cash alternative on a mandatory Bid.

The General Regulations set some potential exceptions to this minimum price condition:

- where the securities' market prices have been affected by exceptional occurrences;
- where the Target company is in financial difficulty; or
- where the highest price paid by the Offeror over the twelve-month period was also due to other transactions.

In the absence of transactions by the Offeror, acting alone or in concert, on the Target company's securities over the above mentioned twelve-month period, the offer price is based on generally accepted objective evaluation criteria.

Obligation to apply the board passivity rule (art. 9)

The French legal order provides for the mandatory application of the passivity rule. According to article L. 233-32 of the Commercial Code, during the offer period, the directors of the Target company shall obtain the authorization of shareholders' general meeting before taking any measures (other than seeking of alternative Bids) liable to frustrate the successful outcome of the Bid.

Notwithstanding the French legal order provides for the mandatory application of the passivity rule, article L. 233-32, part II, of the Commercial Code provides for new defensive measures: the so called "poison pill warrants". In fact, according to such article, extraordinary shareholders' general meeting may make decision, with the quorum provided for by article L. 225-98, to issue free warrants which allow shareholders to subscribe, under preferential conditions, company's securities before the offer period expires.

The shareholders' general meeting may also make a delegation of authority to the board of directors and it makes decisions with reference to the maximum amount of the capital increase as well as the number of warrants which may be issued.

Should the Bid lapse, warrants are no longer validor are withdrawn, so that the issuing of the mentioned warrants is connected to the launching of a Bid.

Moreover, pursuant to article L. 233-32, part III, of the Commercial Code, any decision made by the board of directors prior the Bid is launched, which has not yet been in part or fully implemented and which does not form part of the normal course of the company's business activity, shall also be ratified or confirmed by the shareholders' general meeting.

Obligation to apply the break-through rule (art. 11)

The French legal order provides for a partial application of the break-through rule. In fact, article 11, para. 3, of the Takeover Directive has not been implemented.

French companies may provide for the break-through rule in their articles of association.

Articles L. 233-34 and L. 233-35 of the Commercial Code provide, respectively, that: (i) statutory restrictions on share transfer shall not apply vis-à-vis the Offeror for securities acquired during the offer period, and (ii) share transfer restrictions provided for by shareholders' agreements executed after 21st April 2004 shall not apply to the Offeror during the offer period.

According to article L. 225-125 of the Commercial Code, voting rights restrictions provided for by a Target company's articles of association are suspended in the first shareholders' general meeting following the closing of the Bid when the Offeror, acting alone or in concert, has acquired more than two-thirds of the shares or voting rights of the Target company (as provided for by article 231-43 of the AMF General Regulations).

Pursuant to article 231-44 of the AMF General Regulations, where provided for by the articles of association, the effects of statutory restrictions on the exercise of voting rights attached to the equities of the company, and the effects of clauses in agreements concluded after 21st April 2004 providing for restrictions on the exercise of voting rights attached to the equities of the company, shall be suspended during the first shareholders' general meeting following the close of the Offer where the Offeror, acting alone or in concert, has acquired more than one-half of the shares or voting rights of the Target company.

According to article 231-45 of the AMF General Regulations, where provided for by the articles of association, the extraordinary powers held by certain shareholders to appoint and dismiss directors, members of the Supervisory Board, members of the Management Board, Chief Executive Officers and Deputy Chief Executive Officers

shall be suspended during the first shareholders' general meeting following the close of the Offer where the Offeror, acting alone or in concert, has acquired more than one-half of the shares or voting rights of the Target company (see also L. 233-39 of the Commercial Code).

Reciprocity (art. 12)

The French legal order provides for the application of the reciprocity rule only with reference to article 9 of the Directive (Reciprocity of Takeover defences). Article 233-33 of the Commercial Code, which transposed article 12 of the Directive, provides that the Target company which applies (during the offer period) the principle of authorization request of the shareholders' general meeting in order to take any defensive measures, may invoke the lack of reciprocity and be released from this restriction if the Offeror does not apply the same principle or any equivalent measure.

In case of multiple Bidders, it is sufficient that one of them is not subject to the passivity rule for the French company to be able to invoke the reciprocity exception (unless the Bidder in question, which is not subject to the passivity rule, is acting in concert with the Target).

Thresholds for squeeze-out and for sell-out rights

Pursuant to article 236-1 of the General Regulations of AMF: "where the majority shareholder(s) hold, in concert within the meaning of Article 233-10 of the Commercial Code, 95% or more of the voting rights of a company whose shares are

or were admitted to trading on a regulated market in a Member State of the European Community or in a State party to the EEA Agreement, including France, any holder of voting equity securities who is not part of the majority group may apply to the AMF to require the majority shareholder(s) to file a draft buyout offer. Once the AMF has made the necessary verifications, it rules on such application in the light of, inter alia, the state of the market for the securities concerned and information provided by the applicant. If the AMF declares the application to be acceptable, it notifies the majority shareholder(s), which must then file a draft buyout offer, within a time limit set by the AMF and drawn up in terms that can be deemed compliant by it".

Pursuant to article 236-3 of the AMF General Regulations: "The majority shareholder(s) holding, in concert within the meaning of Article 233-10 of the Commercial Code, 95% or more of the voting rights of a company whose shares are or were admitted to trading on a regulated market in a Member State of the European Community or in a State party to the EEA Agreement, including France, may file with the AMF a draft buyout Offer for the equity securities, and any other securities giving access to the capital or voting rights in the company, that they do not already hold".

Pursuant to article 237-1 of the General Regulations of AMF: "At the close of a buyout Offer carried out in accordance with Articles 236-1, 236-2, 236-3 or 236-4, securities not tendered by minority shareholders or holders of investment certificates or voting rights certificates may be transferred to the majority shareholder or group, provided that they represent not more than 5% of shares or voting rights, in return for compensation.

Similarly, securities that give or could give access to capital may be transferred to the majority shareholder or group, provided that equity securities which could potentially be created, through conversion, subscription, exchange, redemption or any other means, from untendered securities that give or could give access to the company's capital, plus existing but untendered equity securities, do not represent more than 5% of all equity securities that exist or that could be created".

4.6 Germany

Transposition of the Directive

The Takeover Directive was implemented by the Implementation Act of 14th July, 2006, which amended the "Securities Acquisition and Takeovers Act" (*WpÜG*). Section 10 of the mentioned Act ("Publication of the Decision to Make an Offer") was also amended on 5th January, 2007.

Supervisory Authority

The Supervisory Authority is the BaFin (German Federal Financial Supervisory Authority) which has the following powers and tasks:

- to supervise the Offers in accordance with the provisions of the Securities Acquisition and Takeover Act;
- to remedy any grievances which might impair the proper implementation of the procedure or might be materially prejudicial to the securities market;
- to issue orders to prevent or remove such grievances.

Mutual recognition of offer documents

Section 11 of the Securities Acquisition and Takeover Act provides that "an offer document that has been approved by another Member State of the European Economic Area and which relates to a European offer for the acquisition of securities of a Target company domiciled in another Member State of the European Economic Area, whose securities are also admitted to trading on an organized market in Germany, shall be admitted in Germany without any further approval procedure".

Disclosure

According to amended Section 10 of the Securities Acquisition and Takeover Act, the Offeror shall, without undue delay, make public his/her decision to launch an Offer.

Prior to publication, the Offeror shall disclose the decision to:

- the Management Boards of the Exchanges on which securities of the Offeror, the Target company and other companies directly affected by the offer are admitted to trading; and
- the Management Boards of the Exchanges on which derivatives are traded, in so far as the securities are the subject-matter of the derivatives; and
- the Supervisory Authority.

The announcement of the decision to make an offer shall be made in the German language:

- in the Internet; and
- through an electronic information dissemination system with a wide circulation among credit institutions, financial services institutions, etc.

Without undue delay following the publication, the Offeror shall notify the board of management of the Target company in writing of the decision to make an offer. The board of management of the Target company shall, without undue delay, inform the competent works council (Betriebsrat) or, where there is no such works council, the employees directly, of the notification. Without undue delay following the publication, the Offeror shall also notify his/her competent works council or, where there is no such works council, the employees directly, of the decision to make an Offer.

With reference to the offer document, the Germany Securities Acquisition and Takeover Act provides that the Offeror shall disclose the offer document to the Supervisory Authority within four weeks of the publication of the decision to make an offer. The information provided shall be correct and complete. The offer document shall be drawn up in the German language and in a form that facilitates comprehensibility and evaluation. The offer document shall be published without undue delay if the Supervisory Authority has permitted the publication or if ten working days have elapsed since receipt of the Offer document without the Supervisory Authority having prohibited the Offer.

The offer document shall be published:

- by announcement on the Internet; and
- by announcement in the electronic Federal Gazette or by making it available for distribution free of charge at a suitable agency in Germany; in the latter case, the agency holding the offer document and the internet address where the publication of the offer document has been made, shall be specified in the electronic Federal Gazette.

Threshold for mandatory Bids

Under Section 29, subsection 2, of the Securities Acquisition and Takeovers Act, the threshold for acquiring control is at least 30% of the Target company's voting rights. Mandatory bids are regulated by Sections 35 to 39 of the Securities Acquisition and Takeovers Act which provide that a Bid is mandatory when anyone gains control of a listed company.

Period of acceptance

The acceptance period of the Offer may not be shorter than four weeks and longer than ten weeks.

If, in connection with the Offer, a shareholders' general meeting of the Target company is convened after the publication of the offer document, then the acceptance period shall be ten weeks from the publication of the offer document. The board of management of the Target company shall, without undue delay, notify the Offeror and the Supervisory Authority of the convening of the shareholders' general meeting. The Offeror shall publish a notification without undue delay in the electronic Federal Gazette, stating the date of expiry of the acceptance period. The Offeror shall, without undue delay, inform the Supervisory Authority of this publication.

Competing Bids

If, in the event of competing Bids, the acceptance period for the Offer expires prior to expiry of the acceptance period for the competing Offer, then the expiry of the acceptance period for the offer shall be determined by the expiry of the acceptance period for the competing Bid. This shall also apply if the competing Offer is modified or prohibited or contravenes legal provisions.

Holders of securities of the Target company who have accepted the Offer may rescind the contract at any time prior to expiry of the acceptance period, provided that the contract was concluded prior to publication of the offer document for the competing Offer.

Price determination

As provided for by the Securities Acquisition and Takeover Act, the Offeror shall offer the Target company's shareholders an adequate consideration. In determining the adequate consideration, the average stock exchange price of the Target company's shares and acquisitions of shares of the Target company by the Offeror, persons acting in concert with him, or subsidiaries of the latter, shall generally be taken into account.

The minimum price rules applicable to mandatory Offers apply also to voluntary Bids aimed at the acquisition of control of a listed company. In particular, the minimum price to be paid shall not be lower than the weighted average share price during the three months preceding the announcement that the Bidder has acquired control (in the case of a mandatory Offer), or that the Offeror has decided to launch a Bid (in the case of a Takeover bid), and the highest price paid by the Offeror during the six months preceding the launch of the Bid.

Obligation to apply the board passivity rule (art. 9)

The German legal order does not provide for the mandatory application of the passivity rule.

However, pursuant to Section 33a of the Securities Acquisition and Takeovers Act, German listed companies may voluntarily opt in to the passivity rule, by amending their articles of association with a majority of the 75% of the share capital. In case of an opt-in, company's board members shall inform the BaFin and (if applicable) the Supervisory Authority in any other EEA Member State in which the company's securities are admitted to trading on a regulated market.

If the potential Target company does not opt in to the passivity rule, German provisions already applicable before the implementation of the Takeover Directive shall continue to apply. In this case, after the publication of the decision to make an Offer and until the publication of the result of the Bid, the board of management of the Target company may not take any defensive measures which could frustrate the success of the Offer, except for:

- actions that a good manager of a company not subject to a public Offer would have taken;
- the search for competing Offers;
- actions approved by the supervisory board of the Target company; and
- actions subject to shareholders' authorisation that have been authorised by the shareholders' general meeting of the Target company in order to frustrate a Bid and that have been approved by the supervisory board of the Target.

However, any shareholders' resolution shall be valid for a maximum period of eighteen months.

The articles of association of a Target company may provide that the above mentioned provisions do not apply. In this case, the company automatically opts in to the following more restrictive provisions of the Takeover Directive. Therefore, after the publication of the decision to make an offer and until the publication of the result of the Bid, board members and supervisory board of the Target company may not take any actions which might result in the frustration of the Bid, except for:

- actions authorized by the shareholders' general meeting after the publication of the decision to make an Offer;

- actions taken in the normal course of the company's business;
- actions which do not form part of the normal course of the company's business, provided that such actions refer to decisions taken prior to publication of the decision to launch an offer and have been already partly implemented; and
- the search for competing Offers.

Obligation to apply the break-through rule (art. 11)

The German legal order does not provide for the mandatory application of the break-through rule.

However, pursuant to Section 33b of the Securities Acquisition and Takeovers Act, German listed companies may voluntarily opt in to such rule, by amending their articles of association, following the procedure above described. The articles of association of a Target company may provide that the following provisions shall apply after publication of the offer document:

- during the acceptance period of a Takeover bid or mandatory Bid, restrictions on the transfer of shares established in the articles of association of the Target company that have been agreed between the Target company and its shareholders or between shareholders of the Target company after 21st April 2004 shall not apply vis-à-vis the Offeror;
- during the acceptance period of a Takeover bid or mandatory Bid, restrictions on voting rights established in agreements signed after 21st April 2004 will not have effect, and multiple-vote shares will carry one vote each only at a shareholders' general meeting convened to take defensive measures; and
- if, following a Takeover bid, the Offeror holds at least 75% of the Target

company's voting rights, then restrictions on voting rights established in agreements and extraordinary rights concerning the appointment or removal of board members will not have effect and multiple-vote securities will carry one vote each only at the first shareholders' general meeting, convened by the Offeror for the purpose of amending the articles of association or deciding on the appointment or removal of the company's board members.

The board of directors of the Target company shall, without undue delay, refer to the BaFin and the Supervisory Authorities of those Member States of the European Economic Area in which the company's securities are admitted to trading on an organized market, that the Target company has decided to change the articles of association.

Where rights are removed, the Offeror shall provide an equitable compensation in cash. The claim for compensation may only be enforced by Court action until the expiry of two months after the removal of the rights.

Reciprocity (art. 12)

The German legal order provides for the application of the reciprocity rule. Indeed, under Section 33c of the Securities Acquisition and Takeovers Act, a German Target company that has voluntarily opted in to both passivity and break-through rules, may not apply such rules if the Offeror, or a company controlling the Offeror, is not subject to equivalent provisions. The right to invoke the reciprocity rule requires the authorization of the shareholders' general meeting; such authorization may be granted by a resolution, adopted with a simple majority, which shall be valid for a maximum period of eighteen months.

Threshold for squeeze-out and for sell-out rights

The threshold for squeeze-out (Sections 39a and 39b) and for sell-out rights (Section 39c) is 95% of the Target company's capital carrying voting rights.

In particular, with reference to the squeeze-out right, pursuant to Section 39a of the Securities Acquisition and Takeovers Act, "following a Takeover bid or mandatory Bid, the remaining voting shares shall be transferred upon application to the Offeror holding shares in the Target company representing not less than 95% of the capital carrying voting rights, by means of a Court order and against payment of an equitable compensation. If the Offeror simultaneously holds shares representing 95% of the target company's share capital, the remaining non-voting preference shares shall also be transferred to the Offeror upon application". The squeeze-out right procedure is regulated by Section 39b of the Securities Acquisition and Takeovers Act.

As regards to the sell-out right, Section 39c of the Securities Acquisition and Takeovers Act provides that following a Takeover bid or a mandatory Bid, shareholders of a Target company who have not accepted the Offer may accept it within three months after the end of the acceptance period if the Offeror is entitled to file an application pursuant to the above described Section 39a.

If the Offeror fails to comply with the obligations concerning the publication duties of the Offeror following the making of the Offer provided by Section 23, subsection 1, no. 4, or subsection 2, then the above mentioned three-month acceptance period shall not commence until the obligations have been fulfilled.

4.7 Greece

Transposition of the Directive

The Takeover Directive was implemented by Law 3461/2006 on public Takeover bids .

Supervisory Authority

According to article 4, para. 1, of the Law 3461/2006, the Hellenic Capital Market Commission (HCMC) is the competent authority to supervise compliance with such Law provisions and application of the Bid procedure rules in general.

Mutual recognition of offer documents

Pursuant to article 11, para. 10, of the Law 3461/2006, the offer document approved by the competent Supervisory Authority of another Member State and concerning securities admitted to trading in a regulated market operating in Greece, following its translation in the Greek language, may circulate legally in Greece without any new approval required by the HCMC.

The HCMC may require the inclusion of additional information in the offer document only if such information:

- is specific to the Greek Stock Exchange or to a regulated market operating in Greece; and
- relates to formalities that should be complied with to accept the Bid, to receive the consideration due at closing time allowed for the acceptance of the Bid as well as to the tax arrangements to which the consideration offered to securities' holders is subject.

Disclosure

According to article 10 of the Law 3461/2006, the Offeror who decides to launch a mandatory or voluntary Takeover bid shall, before making any public announcement, inform the HCMC and the Target company's board of directors of the Bid. The notification shall be made immediately following the decision to submit a Bid or, in case of a mandatory Bid, within a twenty-day period from the acquisition of one-third of the voting rights of the Target company. At the same time, the Bidder shall also submit a draft of the offer document to the HCMC and to the Target's board of directors. The boards of the Offeree company and of the Offeror shall, without any delay, inform, their employees' representatives (if any) or the employees themselves, about the submission of the Bid.

Pursuant to article 11, para. 4, of the Law 3461/2006, the offer document is approved by the HCMC if its content is consistent with Law provisions.

According to article 11, para. 9, of the Law 3461/2006, after publication of the offer document, the boards of the Offeree company and of the Offeror shall, respectively, provide with it to their employees' representatives, or, if there are not such representatives, to the employees themselves.

Under article 15 of the Law 3461/2006, the Offeree company's board of directors shall draw up and make a document public, setting out its reasoned opinion on the Bid. This obligation also exists in case of revision of the Bid or of competing Bids. The mentioned document shall be accompanied by a detailed report issued by a financial advisor and shall at least:

- determine the number of securities of the Offeree company held, directly or

indirectly, by the board and its managers;

- lay out actions taken by the board of the Offeree company or it intends to take in regard to the Takeover bid;
- report any agreement existing between the board of the Offeree company, or its members, and the Offeror;
- explicate opinions of the Offeree company's board concerning the Takeover bid and allege reasons to justify such opinions, with particular reference to the effects of a successful outcome of the Bid on the company's interests (included interests of its employees), and to the Offeror's strategic plans for the company, as set out in the offer document, and, finally, to their likely repercussions on employment and the locations of the Offeree company's places of business.

The offer document shall be filed with the HCMC and the Offeror within a ten-day period from the disclosure of the offer document, and shall be communicated to the employees' representatives of the Offeree company or, if there are no such representatives, to the employees themselves.

Pursuant to article 16, paras. 3 to 5, of the Law 3461/2006, the Offeror shall disclose the offer document to the public within a three-day period from its approval by the HCMC, through the following modalities:

- in printed form which shall be made available to the public at the registered office and branches of the Offeror, its financial advisor and the credit institutions or the investment firms authorised by the Offeror,
- in electronic form on the Offeror's website (if any) and on its financial advisor's websites.

The Offeror shall inform the public about the above mentioned modalities of access to the offer document.
Each public announcement concerning the Bid shall be communicated without delay to the HCMC.
Article 23 of the Law 3461/2006 provides that the results of the Bid shall be made public by the Offeror within a two-day period following the end of the time allowed for acceptance of the Bid, and that such results shall be communicated to employees' representatives or, if there are no such representatives, to the employees themselves.

Thresholds for mandatory Bids

Pursuant to article 7 of the Law 3461/2006, where any person, as a result of an acquisition, holds, directly or indirectly, more than one-third of the total voting rights in a listed company, such person is obliged to launch a mandatory Bid, within a twenty-day period from the acquisition, on all securities of that company, offering an equitable and fair consideration. The same obligation arises for any person already holding more than one-third, without, however, exceeding 50% of the total voting rights in a listed company, who, within twelve months, acquires, directly or indirectly, either alone or in concert with other persons, securities which represent more than 3% of the total voting rights in that company. However, there is no such obligation if the Offeror has already made a mandatory Bid.
Finally, article 8 of the Law 3461/2006 provides for some exemptions from the application of mandatory Bids.

Period of acceptance

Article 18, para. 2, of the Law 3461/2006 provides that the time period for the acceptance of a Bid may not be less than four weeks from the date of publication of the offer document. The HCMC, following a request of the Offeror, submitted at least two weeks before the closing of the Bid, may prolong this time period for two weeks. The HCMC's decision to extend the offer period shall be made public by the Offeror.

Competing Bids

Pursuant to article 20 of the Law 3461/2006, in case of a competing Bid, the Offeror may revoke his/her voluntary Bid.

According to article 21 of the Law 3461/2006, the Offeror may, no later than five working days before the end of the acceptance period, improve the terms of the Bid.

Under article 26 of the Law 3461/2006, competing Bids may be submitted no later than seven working days before the end of the acceptance period. They shall be approved by the HCMC within four working days from submission. The acceptance period of the initial Bid, if not recalled, is automatically extended until the end of the acceptance period for the competing Bid. On the next working day following the approval by the HCMC of the offer document in relation to the competing Bid, the competing Offeror shall make public the termination date of the acceptance period for the competing Bid, as well as any extension of the acceptance period for the initial Bid. The competing offer document is made public within two working days following the HCMC's decision.

Persons who have already accepted the initial Bid may accept the competing Bid only if they have previously recalled their statement of acceptance of the initial Bid.

Price determination

As far as voluntary Takeover bids are concerned, there are no minimum offer price requirements pursuant to the law.

Anyway, according to article 9, para. 2, of the Law 3461/2006, in case that the Offeror or a person acting in concert with him/her, over a time period beginning at the time the decision to make a Bid was made public and ending when the Offer closes for acceptance, has acquired securities of the Offeree company, which are the subject of the Bid, at a price higher than the Offer price, the Offeror shall increase the his/her Offer so that it is no less than the highest price paid by him/her or by the persons acting in concert with him/her during the same time period for the securities so acquired.

Pursuant to article 9, para. 4, of the Law 3461/2006, in case of a mandatory Takeover bid, the Offeror shall offer an equitable and fair consideration the amount of which may not be less than the higher of the following prices:

- the average market price of the securities during the six months preceding the date on which the Offeror became obliged to launch the mandatory Bid; and
- the price that the Offeror, or the parties acting in concert with him/her, has/have paid to acquire shares during the twelve months preceding the date on which the Offeror became obliged to launch the mandatory Bid.

In a public Takeover bid, the Offeror may offer - as a payment - cash, or securities (listed or not) or a combination of both. In case of a mandatory Bid, a cash alternative shall be provided.

Obligation to apply the board passivity rule (art. 9)

The Greek legal order provides for the mandatory application of the passivity rule. According to article 14, para. 1, of the Law 3461/2006, apart from seeking alternative Takeover bids, the board of the Offeree company may not, during the time period from the date it has been informed according to article 10, para. 1, and until disclosure of the result of the Bid or its revocation, take any action, outside the normal course of the company's business, which may frustrate the Bid, without the prior authorization of the shareholders' general meeting.

Pursuant to article 14, para. 2, of the Law 3461/2006, the shareholders' general meeting of the Offeree company shall approve or confirm any decision, taken before the notification of the Offer to the Offeree company, which has not yet been totally or partly implemented.

Obligation to apply the break-through rule (art. 11)

The Greek legal order does not provide for the mandatory application of the break-through rule.

Notwithstanding it, article 17, para. 1, of the Law 3461/2006, provides that each company, which has its registered office in Greece, after decision taken by the shareholders' general meeting under an increased quorum and majority of votes, may, according to articles 29, para. 3, and article 31, para. 2, of Codified Law 2190/1920, choose for the implementation of paras. 2 to 6, and, in case, recall such decision. The company shall inform without delay the HCMC and the competent Supervisory Authorities of Member States, in which company's securities are admitted to trading or their admission has been requested, about its above mentioned decisions.

Under article 17, para. 2, of the Law 3461/2006, any restrictions on the transfer of securities, provided for in the articles of association of the Offeree company, shall not apply vis-à-vis the Offeror during the acceptance period of the Bid.
In addition, any restrictions on the transfer of securities provided for in contractual agreements between the Offeree company and securities' holders of the company itself or in contractual agreements between securities' holders of the company entered into after April 21st, 2004 (date of adoption of the Takeover bids Directive), shall not apply vis-à-vis the Offeror during the acceptance period of the Bid.
According to article 17, para. 3, of the Law 3461/2006, any restrictions on voting rights provided for in the articles of association of the Offeree company shall not have effect at the shareholders' general meeting which decides on the defensive measures according to article 14 (defensive measures). Restrictions on voting rights provided for in contractual agreements between the Offeree company and its securities' holders or in contractual agreements between securities' holders of the company entered into after April 21st, 2004, shall not have effect at the shareholders' general meeting which decides on defensive measures according to article 14.
Pursuant to article15, para. 4, of the Law 3461/2006, where, following a Bid, the Offeror holds securities which represent at least 75% of the total voting rights of the Offeree company, no restrictions on the transfer of securities or on the exercise of voting rights, in accordance to paras. 2 and 3 of this article, nor any extraordinary rights of the shareholders concerning appointment or removal of board members provided for in the articles of association of the Offeree company, shall apply at the first shareholders' general meeting, called by the Offeror after the closure of the Bid in order to amend the articles of association or remove or appoint board members.

Pursuant to article 15, para. 5, of the Law 3461/2006, holders of rights removed on the basis of paras. 2 to 4 shall receive an equitable compensation for any loss suffered by them.

According to article15, para. 6, of the Law 3461/2006, paras. 3 and 4 shall not apply to securities for which restrictions on voting rights are compensated by special pecuniary advantages.

Pursuant to article 15, para. 8, this article shall not apply where the Greek Government holds securities in the Offeree company which confer special rights on such company.

Reciprocity (art. 12)

The Greek legal order provides for the application of the reciprocity rule.

Pursuant to article 14, para. 4, of the Law 3461/2006, the Offeree company may not, upon decision of the shareholders' general meeting taken not earlier than eighteen months prior to the date the Bid was made public, apply article 14, paras. 1 and 2, if the Bid is made by a company not applying them or by a company which is controlled by another company not applying paras. 1 and 2.

The company shall, without any delay, communicate this decision to the HCMC as well as to the competent Supervisory Authorities of Member States on the regulated markets of which securities have been admitted to trading or for which a request for admission to trading has been made.

Under article 17, para. 7, of the Law 3461/2006, companies which have chosen to apply the break-through rule (article 17, paras. 2 to 6) may make decision to, after the decision taken by the shareholders' general meeting not earlier than eighteen months before the Bid was made public, not apply the break-through rule, where

the Bid is launched by a company which does not apply the break-through rule or by a company controlled, according to article 42 (e), para. 5, of Codified Law 2190/1920, by another company which does not apply the break-through rule.

Threshold for squeeze-out and for sell-out rights

The Law 3461/2006 introduced for the first time in Greece the right of squeeze-out and sell-out. Article 27 of the Law 3461/2006 provides that where the Offeror, following a Bid addressed to all securities' holders of the Offeree company for acquiring all its securities, holds securities representing not less than 90% of the voting rights in the Offeree company, he/she may demand that all the remaining securities be transferred to him/her. The squeeze-out right may be exercised within three months from the end of the acceptance period of the Bid, provided that the Offeror declared his/her intention to exercise this right in the offer document by submitting a request to the Capital Market Commission, which shall be communicated to the Offeree company. The consideration for such acquisition shall be made in the same form and at least equal to the consideration of the Bid. In any case, the remaining shareholders may opt for payment in cash.

Article 28 of the Law 3461/2006 provides that where the Offeror, following a Bid addressed to all securities' holders of the Offeree company for acquiring all its securities, holds securities representing not less than 90% of the voting rights in the Offeree company, the Offeror is obliged, for a period of three months following the disclosure of the results of the Bid, to buy all securities offered to him/her by the remaining shareholders. The consideration shall be in cash and equal to the offer price, unless the remaining shareholders opt for the securities offered as consideration under the Bid.

4.8 Ireland

Transposition of the Directive

The Takeover Directive was implemented by the new regulations governing Takeovers, entitled "European Communities (Takeover bids (Directive 2004/25/EC) Regulations 2006" (S.I. No. 255 of 2006), which came into operation on 20th May, 2006. New Takeover rules were also adopted on 19th December, 2007. The primary Irish law relating to Takeovers is the Irish Takeover Panel Act of 1997.

Supervisory Authority

According to the Irish Takeover Panel Act of 1997, the Irish Supervisory Authority is, for purposes of this Directive, the Irish Takeover Panel.

Generally, the Panel has the power to supervise a Takeover if the securities of the Offeree company are admitted to trading on the Official List of the Irish Stock Exchange, or if listed on more than one regulated market, they were first admitted to trading on the Official List. In circumstances where the securities were first admitted to trading on more than one regulated market simultaneously, the Offeree company can determine which of the supervisory authorities of those Member States shall be competent to supervise the Bid.

Mutual recognition of offer documents

Where an offer document is subject to the prior approval of a competent authority in another Member State and has been so approved, and is then sought to be relied upon by the Offeror in the State (and the securities of the Offeree company are

admitted to trading in the State), the offer document shall be recognised in the State for the purposes of the Directive. The Panel may require a translation of the offer document.

The Panel may also require the inclusion of additional information in an offer document but only if such information is specific to obligations in the State and relates to the formalities for Bid acceptance and for receipt of the payment due at the closing of the Bid as well as to taxes or charges applicable to the payment offered to the securities' holders.

Disclosure

Pursuant to Rule 2.5 of the Irish Takeover Panel Act of 1997, letter (a), an Offeror may announce a firm intention to make an Offer only when the Offeror and his/her financial adviser are satisfied, after careful and responsible consideration, that the Offeror is able and will continue at all relevant times to be able to implement the Offer. Subject thereto, an Offeror shall announce without delay his/her firm intention to make an Offer.

According to Rule 2.6 of the Irish Takeover Panel Act of 1997, para. (a), promptly after the commencement of the Offer period, the Offeree shall despatch a copy of the announcement initiating the Offer period or, where appropriate, a circular summarising the terms and conditions of the Offer to each of its shareholders and to the Panel.

Pursuant to Rule 2.6 of the Irish Takeover Panel Act of 1997, para. (b), except with the consent of the Panel, if the announcement initiating the Offer period is not an announcement pursuant to the Rule 2.5, the Offeror shall, after the announcement

is made, promptly despatch a copy of the announcement, if any, pursuant to Rule 2.5 to each shareholder of the Offeree.

Under Rule 2.6 of the Irish Takeover Panel Act of 1997, para. (c), where, following an announcement made pursuant to Rule 2.5, a circular summarising the terms and conditions of the Offer is sent to shareholders, the Offeree shall make the full text of the Rule 2.5 announcement readily and promptly available to them.

The Offeror and the Offeree board shall give sufficient information, and the Offeree board shall also give adequate advice to shareholders of the Offeree company in order to enable them to:

- reach a properly informed decision as to the merits or demerits of an Offer; and
- make a decision in good time.

In the context of provision of information, the obligation of the Offeror towards the shareholders of the Offeree shall not be less than the obligation of the board of a company towards its own shareholders.

Any document dispatched by, or on behalf of, the Offeror or the Offeree to shareholders of the Offeree shall include information about any material change in any information previously published by him/her or on his/her behalf during the offer period; if there have been no such changes, this shall be stated.

Pursuant to Rule 19.7 of the Irish Takeover Panel Act of 1997, para. (a), every person, being an Offeror or the Offeree or an associate of either of them, who during the course of an Offer releases to shareholders of the Offeree, to the Stock Exchange or to the media any offer document, Offeree board circular or any other

document or announcement of any kind bearing on the Offer or contemplated Offer (including, without limitation, announcements of annual or interim results of the Offeror or Offeree) or any advertisement or other material (including any notes to editors) shall, subject to the exception in para. (b) below, at the time of release furnish copies of such documents or other material to the Panel and to the advisers to all other principals concerned with the Offer or any competing Offer. Such material shall not be released to the media under an embargo. If such material is released outside normal business hours, the person making the release shall inform such advisers of the release immediately, if necessary by telephone, and shall, if necessary, make special arrangements to ensure that copies of the material are delivered directly to them and to the Panel.

According to Rule 19.7 of the Irish Takeover Panel Act of 1997, para. (b), an Offeror shall deliver a copy of the offer document and any revised offer document to the Panel prior to releasing it pursuant to paragraph (a).

Rule 24 of the Irish Takeover Panel Act of 1997 regulates the contents of the offer document.

Under Rule 25.1 of the Irish Takeover Panel Act of 1997, the board of directors of the Offeree shall draw up a response document which shall include :

- its opinion on the Offer (including any alternative Offers); and
- the substance and source of the advice given to it by the independent adviser; and
- the other information specified in Rule 25.

As provided for by Rule 25.2 of the Irish Takeover Panel Act of 1997, the mentioned

response document shall also include the following information:

- the effects of implementation of the Offer on all the Offeree's interests including, specifically, employment; and
- the Offeror's strategic plans for the Offeree and their likely repercussions on employment and on the locations of the Offeree's places of business, as set out in the offer document pursuant to Rule 24.1; and
- the board's reasons for forming its opinion.

With reference to the offer document, Rule 30.2 of the Irish Takeover Panel Act of 1997 provides that no person may dispatch an offer document to the Offeree's shareholders unless he/she has previously announced his/her firm intention to make that Offer. Except with the consent of the Panel, the Offeror shall dispatch the offer document to the shareholders of the Offeree within twenty-eight days after the date of the announcement of a firm intention to make an Offer. Simultaneously with the dispatch of the offer document, both the Offeror and the Offeree shall make the offer document readily available to the representatives of their respective employees or, where there are no such representatives, to the employees themselves.

Pursuant to Rule 30.3 of the Irish Takeover Panel Act of 1997, except with the consent of the Panel, the board of the Offeree shall advise the shareholders of the Offeree of its opinion on the Offer in a circular (the "first response circular") which it shall despatch to those shareholders within fourteen days after the date of despatch of the offer document. The board of the Offeree shall include to the first response circular a separate opinion from the representatives of its employees on

the effects of the Offer on employment, provided that such opinion is received in good time before the despatch of that circular. Simultaneously with the despatch of the first response circular under paragraph (a), the Offeree shall make the circular readily available to the Offeree's employee representatives or, where there are no such representatives, to the employees themselves.

Thresholds for mandatory Bids

Conditions triggering the obligation to make a mandatory Bid are:

- acquisition of at least 30% of the voting rights of a listed company; or
- consolidation of existing control position.

Period of acceptance

According to Rule 31 of the Irish Takeover Panel Act of 1997, an Offer shall initially be open for acceptance until not earlier than 1.00 p.m. on the 21st day following the date on which the offer document is despatched.

The period of acceptance starts from the earliest of the following dates:

- the time of the first announcement of the Offer;
- when the Panel determines that an offer period in respect of a relevant company has begun or should begin, or in other cases set by the Panel;
- in the case of an Offer under Rule 9 or Rule 37, of the Irish Takeover Panel Act of 1997, the time of the transaction which causes (or which, subject only to the issue in the State of a governmental or regulatory authorisation, consent, approval or clearance, will cause) an obligation to make the Offer,

and ends at the earlier of the following dates:

- when, in the case of a proposed or possible Offer, the Offeror announces that the Offer will not be made; and
- the first closing date or, if later, the time at which the offer becomes unconditional as to acceptances or lapses, whichever occurs first.

Competing Bids

Pursuant to Rule 31.4 of the Irish Takeover Panel Act of 1997, in a competitive situation, an Offeror whose Offer has been sent earlier may, with the consent of the Panel, extend the timetable for his/her Offer so that the last day on which the Offer may be revised coincides with the corresponding dates of a later Offer.

The board of the relevant company concerned, the Offeror and the acquirer or acquirers (as the case may be) shall forthwith consult the Panel which may make such rulings and give such directions in relation to timetables applicable to the Offer and scheme or schemes (as the case may be) as it considers appropriate, having regard to the General Principles, for the purpose of ensuring that to the shareholders of the relevant company shall be afforded the opportunity to consider the respective merits of the Offer and the Takeover scheme or schemes (as the case may be) where:

- during the offer period relative to an Offer which has been the subject of an announcement, an announcement of a firm intention to propose a competing Takeover scheme in respect of the same relevant company is made pursuant to that rule; or

- during the offer period relative to a Takeover scheme which has been the subject of an announcement, an announcement of a firm intention to make a competing offer, or to propose a competing Takeover scheme, in respect of the same relevant company is made pursuant to that rule.

Price determination

Under Rule 9.4 of the Irish Takeover Panel Act of 1997, an Offer made under Rule 9, "Mandatory Bid" of shall be in cash in respect of each class of shares, or shall be accompanied by a cash alternative offer, at a price per share which shall not be less than the highest value of the consideration per share paid by the Offeror or any person acting in concert with him/her for shares of the Offeree of that class during the twelve-month period prior to announcement by the Offeror of a firm intention to make that Offer and ending on the date on which the Offer closes for acceptance.

Obligation to apply the board passivity rule (art. 9)

The Irish legal order provides for the mandatory application of passivity rule. In fact, according to Rule 21.1 "Restrictions" of the Irish Takeover Panel Act of 1997, (a) except with:

- the approval of the Offeree in shareholders' general meeting;
- the consent of the Panel in the case of a proposed action of the type described in any of following sub-paragraphs (1) to (5) where the Panel is satisfied that such action would not constitute frustrating action;

- the consent of the Panel where the holders of securities carrying more than 50% of the voting rights in the Offeree state in writing that they approve the action proposed and would vote in favour of any resolution to that effect proposed at a shareholders' general meeting of the Offeree;
- the consent of the Panel in pursuance of a contract entered into prior to announcement of the Offer or (as the case may be) to any such earlier time as is referred to below; or
- the consent of the Panel where a decision to take the proposed action was made prior to announcement of the Offer or (as the case may be) to any such earlier time as is referred to below and such decision: (i) has been partly or fully implemented before that time; or (ii) has not been partly or fully implemented before that time but is in the ordinary course of business, during an offer period or at any earlier time at which the Offeree board has reason to believe that the making of an Offer in respect of the Offeree is or may be imminent, the Offeree (or any its subsidiary) shall not:

(1) allot or issue any authorised but unissued shares (including treasury shares);
(2) issue or grant an option in respect of any unissued shares (including treasury shares);
(3) create or issue, or permit the creation or issue of, any security conferring rights of conversion into or subscription for shares;
(4) sell, dispose of or acquire, or agree to sell, dispose of or acquire, any assets of a material amount or any operations yielding profits of a material amount;
(5) enter into any contract otherwise than in the ordinary course of business; or

(6) take any action, other than seeking alternative offers, which may result in frustration of an offer or possible offer or in Offeree shareholders being denied the opportunity to decide on the merits of such an Offer or possible Offer.

(b) The notice convening any such shareholders' general meeting of the Offeree as is referred to in paragraph (a) shall include appropriate information about the Offer or possible Offer.

Obligation to apply the break-through rule (art. 11)

The Irish legal order does not provide for the mandatory application of the break-through rule.

Reciprocity (art. 12)

The Irish legal order does not provide for the application of the reciprocity rule.

Threshold for squeeze-out and for sell-out rights

The threshold for squeeze-out and for sell-out rights was increased from 80% to 90% of voting capital and voting rights of the Offeree company.

4.9 Italy

Transposition of the Directive

The Takeover Directive was implemented by Legislative Decree no. 229 of 19th November, 2007, which amended the Legislative Decree no. 58 of 24th February, 1998 ("Consolidated Law on Finance"). Articles 104, 104-*bis* and 104-*ter* of the Consolidated Law on Finance were also recently amended by Law Decree no. 185 of 29th November, 2008 ("Anti-Crisis Decree"). The conversion into law of the Anti-Crisis Decree took place on January 28th, 2009 (Law no. 2 of January 28th, 2009) and the content of the amended articles 104, 104-*bis* and 104-*ter* was not furtherly modified by the final version of the Law.

Supervisory Authority

The Italian Supervisory Authority is Consob (Commissione Nazionale per le Società e la Borsa) which, according to article 101-*ter* of the Consolidated Law on Finance has the following powers and tasks:

- supervision of Takeover bids;
- approval of the offer document;
- possibility to suspend the Bid, as a precautionary measure, if there are grounds to suspect violation of law provisions or of regulatory provisions, and to declare it lapsed if such violation is confirmed;
- possibility to suspend the Takeover bid for a period not exceeding thirty days if new facts, or facts not previously known, that would not allow receiving parties to form a reasoned opinion on the Bid, come to light.

By regulation, Consob shall also dictate the enactment of Consolidated Law on

Finance provisions with regards, in particular, to :

- content and publication terms of the offer document and terms of implementation of the Takeover bid;
- correctness and transparency of transactions on the financial products concerned;
- recognition of offer documents approved by the supervisory authorities of other EU Member States or non-EU countries with which co-operation agreements exist;
- publication terms of measures adopted by Consob;
- effects, on the Takeover bid price, of purchase of the financial products concerned by the Bidders or persons acting in concert with them after issue of the notification to Consob of the decision to launch a Bid, pending the Bid or in the six months following its closing;
- amendments to the Bid, increased and competing Bids, without limiting the number of increased Offers, that may be made prior to expiry of a maximum deadline.

Mutual recognition of offer documents

As written above, the implementation Law provides that mutual recognition of offer documents shall be regulated by the Supervisory Authority (Consob), but this regulation is not available yet.

Disclosure

Pursuant to article 102 of the Consolidated Law on Finance, the Offeror shall notify Consob of his/her intention to launch a Bid, attaching a copy of the offer document

and the acceptance form. Notifications of Offers shall be disclosed, without delay, also to the market and at the same time to the issuer. Information provided by the Offeror shall be clear, complete and knowable by the receiving parties.

Following the filing of the offer document, Consob may, within fifteen days, request further information, and/or amendments to such document. After the expiration of this period without Consob notified the Offeror of any omission, the offer document is considered approved by Consob, thus it can be forwarded to the Target company and finally published.

The offer document shall be circulated by means of integral publication in newspaper with adequate circulation or by means of delivery to intermediaries and simultaneous publication in newspaper with adequate circulation of the notice of delivery, or through other means agreed with Consob. A copy of the offer document shall be sent to Consob in electronic form.

As soon as the Offer has been made public, the boards or control bodies of the Offeror and of the Target company shall inform the representatives of their respective employees or, where there are no such representatives, the employees themselves.

According to article 103 of the Consolidated Law on Finance, the board of directors of the Target company shall provide with a statement containing all information necessary to evaluate the effects of a successful Bid on the interests of the company and on employment and its own evaluation of the Bid. The mentioned statement shall be also circulated to employees' representatives who have the possibility to send their opinion on the repercussions on employment conditions. Such opinion, if received in time, shall be attached to the statement.

Under article 41, para. 2, letter c), of the Regulation implementing the provisions

on issuers of Legislative Decree no. 58 of 24th February 1998, the Offeror and the persons appointed to collect acceptances shall announce the number thereof at least weekly.

Threshold for mandatory Bids

According to article 106 of the Consolidated Law on Finance, any party which, as a result of acquisitions, comes into possession of a shareholding exceeding the 30% threshold shall implement a Takeover bid addressed to all holders for the full quota of securities in their possession and admitted to trading on a regulated market.

Period of Acceptance

Generally, the acceptance period shall not be less than fifteen and not more than twenty-five days.

With reference to Takeover bids made pursuant to article 106, para. 4 (i.e., shareholding exceeding the 30% threshold held as a result of a Takeover bid involving all the holders of securities and for the total quantity of securities in their possession) and to partial-acquisition public Offers made pursuant to article 107, the acceptance period shall not be less than twenty-five days and not more than forty days.

Competing Bids

Under article 44 of the Regulation implementing the provisions on issuers of Legislative Decree no. 58 of 24th February 1998, competing and increased Bids shall be admitted only if the total consideration for each class of financial instrument involved is higher than that one of the last competing Bid or increased Bid, or if they involve the elimination of a condition for the Offer to be effective.

Competing Bids shall be published until five days before the closing date of the preceding acceptance period and, in the event of extension, within fifty days of the publication of the first Bid.

Increased Offers shall be made within five days from the publication of the competing Bid or an earlier increased Offer made by another Offeror. Increased offers may not be made beyond the tenth day preceding the closing of the acceptance period of the last Offer. On the last valid day all Offerors, except those for which the deadline referred to in the previous paragraph has already expired, may make another increased Offer, subject to its being notified to Consob.

The acceptance period for Bids and the date for the publication of the results shall be aligned with those of the last competing Bid unless the earlier Offerors, within five days of the publication of the competing Bid, notify Consob and the market that they intend to keep the original expiration unchanged; where they do so, they may not make increased Offers.

Following publication of a competing Bid or an increased Bid, acceptances of the other Bids shall be revocable.

Price determination

Pursuant to article 106, para. 2, of the Consolidated Law on Finance, for each securities category the price shall not be less than the highest price paid by the Bidder, and by parties acting in concert with him/her, in the twelve months prior to issue of the notice concerning the intention to make a Bid, to acquire securities of the same category. If no purchase against payment of securities of the same category was made in the period indicated, the Takeover bid is implemented for that category of securities at a price no less than the weighted market average over

the previous twelve months or shorter available period.
Payment of the Bid may be constituted, wholly or in part, by securities.

Obligation to apply the board passivity rule (art. 9)

The Italian legal order does not provide for the mandatory application of the passivity rule.
Notwithstanding that, according to article 104 of the Consolidated Law on Finance, as amended by article 13 of the Law Decree no. 185 of 29th November, 2008, converted into the Law no. 2 of 28th January, 2009, Italian listed companies may provide the passivity rule in their articles of association as follows:
unless duly authorised by a resolution of the ordinary or extraordinary shareholders' general meeting, Italian listed companies whose securities are object of a Takeover bid may not adopt any defensive measures which might frustrate the Bid.
Such rule shall apply from the notification to Consob and disclosure to the public of the decision to launch a voluntary Takeover bid or the occasion giving rise to launch a mandatory Takeover bid, until closure or lapse of the Takeover bid.
The seeking for other Bids shall not constitute an act or transaction to frustrate the Bid.
The directors, members of the controlling body and supervisory council, and general managers shall in any event remain liable for all actions and transactions performed.
As regards decisions made prior to notification to Consob and disclosure to the public of the decision to launch a voluntary Takeover bid or the occasion giving rise to launch a mandatory Takeover bid, and not yet fully or partly implemented, shareholders' general meeting authorisation is also required to implement any decision which does not form part of the normal course of the company's business and whose implementation might frustrate the Bid.

Obligation to apply the break-through rule (art. 11)

The Italian legal order does not provide for the mandatory application of the break-through rule except for the right of withdrawal from shareholders' agreement, if any, for shareholders who want to adhere to the Bid (article 123, para. 3, of the Consolidated Law on Finance).

Nevertheless, pursuant to article 104-*bis* of the Consolidated Law on Finance, as amended by article 13 of the Law Decree no. 185 of 29th November, 2008, converted into the Law no. 2 of 28th January, 2009, the articles of association of an Italian listed company, other than a cooperative, may provide that, where a Takeover bid or equity swap is launched involving securities issued by that company, the following regulations shall apply:

- during the offer period, limitations on the transfer of securities provided for in the articles of association shall have no effect vis-á-vis the Bidder. Likewise, limitations on voting rights provided for in the articles of association or shareholders' agreements in cases where a shareholders' general meeting is convened to decide on defensive measures, shall have no effect on the Bidder;
- if, as a result of a Takeover bid, the Offeror holds at least 75% of the share capital with voting rights in relation to resolutions on the appointment or removal of directors or members of the controlling body or supervisory council, at the first shareholders' general meeting following the closing of the Bid, convened to amend the articles of association or to revoke or appoint directors or members of the controlling body or supervisory council, the following shall have no effect:

a) limitations on voting rights provided for in the articles of association or shareholders' agreements;

b) any special right in relation to the appointment or removal of directors or members of the control body or supervisory council provided for in the articles of association.

If the Bid has a successful outcome, the Offeror shall have to pay a fair indemnity for any prejudice to share capital suffered by holders of rights the exercise of which is rendered null by application of the provisions of paras. 2 and 3 of article 104-*bis*, provided that provisions of the articles of association or contractual provisions constituting such rights were in force prior to notification to Consob of the decision to launch a Takeover bid or the announcement to the public of the mentioned decision. The claim for indemnity shall be submitted to the Offeror, on penalty of lapse, within ninety days of the close of the Bid or, within ninety days of the date of the shareholders' general meeting. Should no agreement be reached, the amount of the indemnity shall be decided by the Court as a discretionary assessment with regard, *inter alia*, to a comparison between the average market price of the securities in the twelve months prior to issue of the first notice concerning the Bid and the price performance following the positive outcome of the Bid.

The break-through rule does not apply to Offers on cooperatives and with respect to articles of association limitations on voting rights attributed to securities with capital privileges.

Reciprocity (art. 12)

The Italian legal order provides for the application of the reciprocity rule.

According to article 104-*ter* of the Consolidated Law on Finance, as amended by article 13 of the Law Decree no. 185 of 29th November, 2008, where envisaged in the articles of association, the passivity and the break-through rules shall not apply

if the Takeover bid is launched by a party which is not subject to such provisions or equivalent provisions, or by a company or authority controlled by such party. Where the Bid is made by people acting in concert, it is sufficient that none of the Bidders are subject to such provisions.

On request of the Bidder or the Target company and within twenty days after submission of such request, Consob shall decide whether the above mentioned rules applicable to the parties are equivalent to provisions to which the Target company is subject. By regulation, Consob shall establish the content and submission terms of such a request.

Any measure adopted by the Target company that might frustrate the Bid shall be expressly authorised by the shareholders' general meeting, with regard to a possible Takeover bid, in the eighteen months prior to disclosure of the decision to implement a Takeover bid pursuant to article 102, para. 1. Without prejudice to article 114, such authorisation shall be disclosed to the market without delay in accordance with the terms pursuant to said article.

Thresholds for squeeze-out and for sell out-rights

The threshold for squeeze-out right is 95% of shareholding carrying voting rights, while the threshold for sell-out right is 90/95% of shareholding carrying voting rights. According to article 111 of the Consolidated Law on Finance, if, after a full Takeover bid, a Bidder comes into possession of a holding of at least 95% of the capital represented by securities, he/she shall have the right of squeeze-out on remaining securities within three months of expiry of the time limit for Bid acceptance, if the intention to exercise such right was declared in the offer document. Where more than one securities category is issued, the right of squeeze-out shall subsist only for

categories of securities for which the 95% threshold is reached.

As provided for by article 108, para. 1, of the Consolidated Law on Finance, if, as a result of a full Takeover bid, the Bidder becomes holder of at least 95% of the capital represented by securities, squeeze-out of the remaining securities shall be mandatory should any other party so request.

Pursuant to article 108, para. 2, of the Consolidated Law on Finance, any party which becomes holder of a quota exceeding 90% of capital represented by securities admitted to trading on a regulated market shall mandatorily squeeze-out the remaining securities admitted to trading on a regulated market by any holder thereof unless a float sufficient to ensure regular trading performance is not restored within ninety days.

In both cases (paras. 1 and 2), where more than one securities category is issued, mandatory squeeze-out shall subsist only for categories of securities for which such 95% or 90% threshold is reached.

4.10 Luxembourg

Transposition of the Directive

The Takeover Directive was implemented by Luxembourgian Law of May 19th, 2006 on Takeover bids.

Supervisory Authority

The Supervisory Authority is the CSSF (*Commission de Surveillance du Secteur Financier*) which supervises Takeover bids and approves offer documents relating to such Bids.

The CSSF shall supervise any Takeover bid regarding companies with registered offices in Luxembourg and whose securities are admitted to trading on a regulated market in Luxembourg.

Pursuant to article 4, letters d) and e), of Law of May 19th, 2006, when securities are admitted to trading on a regulated market of another Member State and when securities are admitted to trading at the same time on regulated markets of more than one Member State, the CSSF shall supervise that issues concerning the offered consideration, and the procedure concerning Takeovers and, in particular, information regarding the Bidder's intention to launch a Bid, and the offer document's contents, as well as disclosure, are observed according to the rules of the Member State of the competent supervisory authority.

Mutual recognition of offer documents

According to article 6, para. (2), of the Law of May 19th, 2006, with reference to Bids launched outside the jurisdiction of the CSSF, the offer document may be recognised in Luxembourg only if it is approved by the competent authority and translated in Luxembourgian, or French, or German or English, if the Offeree company's securities are admitted to trading in Luxembourg, being not necessary to obtain the CSSF approval. The CSSF may require the inclusion of additional information in the offer document only if such information is specific to the market of Luxembourg and relates to the formalities to accept the Bid and receive the payment due at the closing of the Bid as well as to the tax arrangements applicable to the offered payment.

Disclosure

According to article 6 of the Law of May 19th, 2006, the Offeror shall disclose immediately his/her intention to launch a Takeover bid. The CSSF shall be informed about the Offer prior to disclosure of the Bid and both the board of directors of the Target company and of the Offeror shall inform their respective employees' representatives or, if there are no representatives, the employees themselves.

The Offeror shall draw up an offer document containing all the information concerning the Bid so that shareholders may make an informed decision.

Before making the offer document public, the Offeror shall submit it to the CSSF for approval within ten days after the disclosure of his/her intention to make a Bid.

The CSSF notifies the Offeror its decision concerning the approval of the offer document within thirty days from the deposit of the draft of the offer document.

When the offer document is made public, the board of directors of the Target company and of the Offeror shall communicate it to their respective employees' representatives or, if there are no representatives, to the employees themselves.
The board of directors shall request an opinion to the employees' representatives, or, if there are no representatives, to the employees themselves, concerning the Bid's repercussions on all of the company's interests and especially on employment.
Pursuant to article 8 of the Law of May 19th, 2006:
(1) the disclosure of the Bid shall guarantee transparency and integrity of the stock market of the Target company, of the Offeror or of any other company concerned by the Bid, in order to avoid the publication or the spread of false or misleading information;
(2) the CSSF shall determine modalities for publication of information and documents in order to guarantee an easy access to shareholders - at least in those Member States' regulated markets on which Target company's securities are admitted to trading - as well as to employees' representatives of the Target company and of the Offeror or, if there are no representatives, to the employees themselves.
According to article 10, para. 5, of the Law of May 19th, 2006, the board of directors of the Target company shall make public a document containing its reasoned opinion about the Offer, in particular with reference to the Bid's consequences on the interests of the company and on the Offeror's strategy for the Target company and for employees, on the basis of the offer document's contents. Before issuing its opinion, the board of directors shall consult the employees' representatives or, if no such representatives exist, the employees themselves. If the

board of directors receives in time an opinion drawn up by employees' representatives about the consequences of the Bid, it shall be attached to the board of directors' opinion.

Pursuant to article 13 of the Law of May 19th, 2006, the Offeror shall communicate the number of securities to the CSSF and make it public, and specify the number of voting rights with reference to which the Offer has been accepted or somehow held by the Offeror, or by parties acting in concert with him/her, on:

- all seven days from the publication of the Bid; and
- all mornings of the last seven days of the acceptance period; and
- the last day evening of the acceptance period.

Threshold for mandatory Bids

According to article 5 of the Law of May 19th, 2006, if any person, following an acquisition alone or in concert with other people, holds, directly or indirectly, a percentage of voting rights which gives him/her the control of a listed Luxembourgian company, such person is required to make a Takeover bid for the totality of securities at a fair price.

This provision does not apply where control has been acquired following a voluntary Bid addressed to all securities' holders for the totality of their holding.

The percentage of voting rights which confers the control of the company and modalities for calculating the mentioned percentage are those ones provided for by the Member State's regulation where the company has its registered office.

For companies whose registered office is in Luxembourg, the percentage giving control is fixed in 33,33% of the voting rights.

Price determination

Pursuant to article 5, para. 4, of the Law of May 19th, 2006, the fair price is considered as the highest price paid for the same securities by the Bidder, or any party acting in concert with him/her, during the twelve-monthperiod prior to making the Takeover bid.

If, after publication of the Offer and before expiration of acceptance period, the Offeror, or any party acting in concert with him/her, acquires those securities at a price higher than the Offer price, then the Offeror shall increase his/her Offer to an amount not less than the highest price paid for purchasing such securities.

The CSSF is entitled to modify the fair price. Such price may not be raised or lowered unless it has been fixed through an agreement between an acquirer and a seller, or if stock market prices of such securities have been manipulated, or if stock market prices in general, or some prices in particular have been object of any exceptional events, or to rescue a company from bankruptcy.

In such cases, the CSSF shall adopt clearly defined criteria such as the average market value over a certain period, the liquidation value of the company or other objective evaluation criteria usually adopted in the financial analysis. Every decision of the CSSF which modifies the fair price shall be reasoned and made public.

Period of Acceptance

Pursuant to article 7 of the Law of May 19th, 2006, the period for accepting the Bid may not be lower than two weeks nor higher than ten weeks from the date of publication of the offer document. The period of ten weeks may be extended, provided that the Offeror notifies, at least two weeks in advance, his/her intention

to close the Bid.
The CSSF may allow the derogation from the above time limit rules, so that the Target company may convene a shareholders' general meeting in order to examine the Offer.
If the Offeror acquires the control of the Target company, securities' holders who did not accept the Offer until the closing of the acceptance period may accept it with a fifteen days' delay from the publication provided for by article 13, para. (1), except in case of a mandatory Bid pursuant to article 5.

Competing Bids

In the case of a competing Bid, the acceptance period of the initial Bid is automatically extended and expires at the end of the competing Bid's acceptance period.
When a competing Bid is launched, acceptance may be revoked.

Obligation to apply the board passivity rule (art. 9)

The Luxembourgian legal order does not provide for the mandatory application of the passivity rule.
Notwithstanding it, according to article 10 of the Law of May 19th, 2006:
(1) rules provided for by paras. (2) and (3) shall be followed if a company decided to be submitted to these rules according to article 9, without prejudice of rules concerning an eventual exemption from the application of article 9 itself;
(2) during the offer period, the board of directors of the Target company shall obtain a previous authorization by the shareholders' general meeting in order to take actions which may frustrate the Bid, with the exception of seeking competing Bids,

and in particular, to issue securities in order to prevent the Offeror from taking the control of the Target company. Such authorization is required from the time the board of directors of the Target company has knowledge of the Bid until the result of the Offer is made public or until the Offer lapses;
(3) as regards to decisions made before the beginning of the period mentioned in para. 2 and not yet partly or totally elapsed, the shareholders' general meeting shall approve or confirm any decision which does not form part of the normal business activities of the company and whose purpose is to frustrate the success of the Bid;
(4) in order to obtain the previous authorization, or approval or confirmation of the shareholders' general meeting, a shareholders' general meeting may be convened through a sole announcement included in the Memorial and inserted in a Luxembourgian newspaper at least two weeks prior to the shareholders' general meeting.

Obligation to apply the break-through rule (art. 11)

The Luxembourgian legal order does not provide for the mandatory application of the break-through rule.
Nevertheless, pursuant to article 12 of the Law of May 19th, 2006:
(1) without prejudice for the other rights and obligations provided for by laws and regulatory provisions in force, provisions contained in paras. (2) to (7) of article 12 shall apply when the Offer is made public and the company decided to apply such rules as provided for by article 9, without prejudice to provisions concerning a possible exemption from the application of article 9 itself;

(2) all restrictions concerning transfer of securities provided for by the Target company's articles of association shall not apply vis-à-vis the Offeror during the acceptance period. All restrictions concerning the transfer of securities provided for by agreements between the Target company and securities' holders of such company or by agreements concluded between securities' holders of the Target company after 21st April, 2004 shall not apply vis-à-vis the Offeror during the acceptance period;
(3) restrictions concerning voting rights provided for by the Target company's articles of association are not valid until a shareholders' general meeting is convened to decide on any defensive measures, according to article 10.
Restrictions concerning voting rights provided for by agreements between the Target company and securities' holders of such company, or by agreements concluded between securities' holders of the Target company after 21st April, 2004, are not valid until a shareholders' general meeting is convened to decide on any defensive measures, according to article 10.
Securities which confer multiple voting rights entitle their holders to exercise one vote only in a shareholders' general meeting which decides on defensive measures, as provided for by article 10;
(4) if, after a Bid, the Offeror holds at least 75% of capital carrying voting rights, restrictions concerning the transfer of securities and voting rights as provided for by paras. (2) and (3), as well as extraordinary rights of shareholders regarding the appointment or the revocation of board members, provided for by the articles of association of the Target company, shall not apply.

Securities carrying multiple voting rights confer the right of exercising only one voting right at the first shareholders' general meeting convened by the Offeror after the closing of the Bid in order to modify the articles of association or to revoke or to appoint members of the board of directors. For this purpose, the Offeror may convene a shareholders' general meeting at the same conditions of those provided for by article 10, para. (4);

(5) when such rights are cancelled on the basis of paras. (2) to (4) of article 12 or article 9, holders of such rights are entitled to a fair indemnification. Conditions to determine such indemnification, as well as modalities of payment, shall be approved by the CSSF;

(6) paras. (3) and (4) shall apply to securities when restrictions concerning voting rights are compensated for some specific pecuniary advantages;

(7) when a Member State holds securities of the Target company which confer privileged rights compliant with the Treaty on European Union, article 12 shall not apply neither to privileged rights provided for by the national legal order and compliant with the Treaty, nor to cooperative companies.

Reciprocity (art. 12)

The Luxembourgian legal order provides for the application of the reciprocity rule. In fact, pursuant to article 9 of the Law of May 19th, 2006:

(1) companies whose registered offices are in Luxembourg may decide whether apply provisions of article 10, paras. (2) and (3), and of article 12, or just one of the two, without prejudice of article 12, para. (7);

(2) the decision of the company is made by a shareholder's general meeting, according to rules applicable to the articles of association's modifications. The decision is notified to the CSSF, as well as to all supervisory authorities of Member States where securities are admitted to trading on regulated markets or where the application has been made for this purpose;

(3) companies which apply article 10, paras. (2) and (3), or article 12, are exempted from applying article 10, paras. (2) and (3), or article 12, if a Bid is launched by a company which does not apply these articles or by a company which is controlled, directly or indirectly, by such company according to article 1 of Directive 83/349/CEE;

(4) the CSSF supervises that provisions applicable to different companies are disclosed without delay;

(5) any provision, which applies by virtue of para. (3), is submitted to the authorization of shareholders' general meeting of the Target company. Such authorization shall be received within eighteen months prior to publication of the Offer, according to article 6, para. (1).

THRESHOLDS FOR SQUEEZE-OUT AND FOR SELL-OUT RIGHTS

Pursuant to articles 15 and 16 of the Law of May 19th, 2006, the threshold for squeeze-out right is 95% of voting capital and voting rights and the threshold for sell-out right is 90% of voting rights.

Indeed, under article 15:

(1) when a Bid is addressed to all securities' holders of the Target company for the totality of securities, paras. (2) to (5) are applicable;

(2) if the Offeror holds securities representing at least 95% of the capital with voting rights and 95% of voting rights of the Target company, then he/she may request all the holders of the remaining securities to sell him/her such shares at a fair price.

(3) the CSSF shall supervise the application of rules which permit to calculate/verify when the threshold is reached. If the Target company issued different Securities' classes, the mandatory squeeze-out right may be exercised only in the class of securities in which the relevant threshold has been reached;

(4) when the Offeror makes the decision to exercise the mandatory squeeze-out right, he/she shall do it within three months after the acceptance period provided for by article 7;

(5) the CSSF shall supervise in order that a fair price is guaranteed. Such price shall take the same form as the Offer consideration or consist solely in cash. Cash consideration shall be offered at least as an option.

After a voluntary Bid, in the case provided for by para. (2), consideration of the Bid is considered fair if, following the acceptance of the Bid, the Offeror acquired

securities which represent at least 90% of the capital carrying voting rights.
After a mandatory Bid, the offer consideration is presumed to be fair.
Pursuant to article 16:
(1) if any person, following a Bid addressed to all holders of securities, alone or in concert with other parties, holds securities which confer him/her more than 90% of the voting rights in a Target company through this law (Law of May 19th, 2006 on Takeover Bids), then any shareholder may request to the mentioned person to buy back his/her securities at a fair price as defined in article 15, para. (5);
(2) article 15, paras. (3) to (5), is applicable mutatis mutandis.

4.11 The Netherlands

Transposition of the Directive

The Takeover Directive was implemented by the Decree on Takeover bids (*Besluit openbare biedingen Wft*).

A certain number of exemptions from the offer rules are included in articles 56a to 56c of the Exemption Regulation of the Act on Financial Supervision (*Vrijstellingsregeling Wft*) and the Exemption Decree Takeover bids (*Vrijstellingsbesluit overnamebiedingen Wft*).

Supervisory Authority

The Netherlands Supervisory Authority is the Dutch Authority for the Financial Markets (*Autoriteit Financiële Markten - AFM*) which supervises Takeover bids for securities admitted to trading on a regulated market in the Netherlands.

Some issues fall under the competence of the Enterprise Chamber of the Amsterdam Court of Appeal as, for instance, the judgment concerning whether a mandatory Offer shall be made or not and the possible adjustment of the "fair price".

Mutual recognition of offer documents

Pursuant to Section 11 of the Decree on Takeover bids, a Takeover bid may be made in the Netherlands on the basis of an offer document approved by a Supervisory Authority of another EU Member State (competent under the Takeover Directive). Nonetheless, the AFM is authorised to request the Bidder to provide with additional information in the offer document or in a supplementary document, which relates

specifically to the Dutch financial market formalities that shall be observed in connection with the acceptance of the Bid or with the receipt of the consideration and the fiscal regime that will apply to the consideration offered to securities' holders. The AFM may also require a translation of the offer document into Dutch or, if it has been drawn up in English, the AFM may require a summary in Dutch.
Under Section 9 of the Decree on Takeover bids, if the AFM has approved the offer document, and if the Offeror so requests, it will provide the supervisory authorities of another Member State in which the relevant securities have been admitted to trading on a regulated market with a statement that the offer document has been compiled in accordance with Directive 2004/25/EC and a copy of the approved offer document within three working days after its receipt of the request.

Disclosure

Pursuant to Section 4 of the Decree on Takeover bids, the Offeror shall announce without delay his/her intention to launch a Bid. Under Section 7 of the Decree on Takeover bids, within four weeks after the announcement of a public Offer, the Offeror shall publish a press release in which he/she shall state that:

- a request for approval of the offer document will be submitted to the AFM within a period to be determined and specified by the Offeror, of maximum twelve weeks after the announcement of the decision to make a Bid; or
- has decided not to make an Offer (obviously the Offeror may not take such decision in case of a mandatory Bid).

The Offeror shall guarantee that he/she has "certain funds" in order to fulfil any cash consideration or that has taken all reasonable measures to secure the payment

of any other form of compensation. Such certainty of funds shall be in place at the latest when the approval request of the offer document has been filed to the AFM. As soon as the Offeror has these "certain funds" at disposal, he/she shall make a public announcement.

With reference to the offer document, within the period announced by the Offeror in the four-week press release, the Offeror shall submit a request for approval of the offer document to the AFM. Pursuant to Section 10 of the Decree on Takeover bids, after the decision of the AFM is reported to the Offeror, he/she shall make a Bid within six working days by making the offer document publicly available free of charge (e.g. publication in a nationwide newspaper or on the Target company's website or on his/her own website) The Offeror publishes a press release about the general availability of the offer document, specifying where the offer document is available. Under Section 10, subsection 4, of the Decree on Takeover bids, immediately after making the offer document publicly available, the Offeror shall notify his/her employees' representatives or, in the absence of such representatives, the employees themselves of the public Takeover, and provide them simultaneously with copies of the offer document.

Within the above mentioned six working days, the Offeror may publicly announce that he/she will not make a public offer.

The Target company is obliged to convene a shareholders' general meeting within at least six working days prior to the end of the Offer period, in order to inform its shareholders about the Offer. At least four days prior to the shareholders' general meeting, the Target company shall publicly announce whether or not it intends to

support the Offer ("determination of the position"). In the event of a friendly Offer [8], this position statement will generally be published at the same time as the offer document. Prior to its publication, the determination of the position shall not be subject to the approval of the AFM.

Thresholds for mandatory Bids

Any party, whether alone or acting in concert, who acquires, directly o indirectly, a shareholding which allows him/her to exercise at least 30% of the voting rights in the shareholders' general meeting of the Target company, is obliged to make an Offer for all remaining shares.

A mandatory Offer may be announced in three alternative ways:

- through a press release about the Offer published by the Offeror; or
- after the judgment of the Enterprise Chamber, regarding the obligation for making a public Offer, has become final and conclusive; or
- through a press release published by the Target company in which it is stated that a mandatory Offer is required by the regulations of another Member State.

Immediately after the announcement of a mandatory Offer, the latter is subject to the supervision on public Offers by the AFM.

Period of acceptance

Pursuant to Section 14 of the Decree on Takeover bids, with reference to full Offers or mandatory Offers, the acceptance period shall be at least four weeks. The acceptance period regarding partial Offers or tender Offers may not be shorter than two weeks.

[8] Friendly Offer means that the Offer is approved by the Target company's board of directors.

The offer period starts after the first working day following the publication of the offer document. The offer period may not be longer than ten weeks starting from the day on which it first becomes possible to make the Offer and ending on the day on which such possibility is no longer available.
Under Section 15 of the Decree on Takeover bids, the offer period may be extended once if not all conditions of the Offer have been fulfilled yet. An extension shall be publicly announced at the latest on the third working day after the end of the original offer period. If the offer period is extended, shareholders have the possibility to withdraw their acceptance.

Competing Bids

A competing Bid can be made by an Offeror at any time during the offer period concerning the previous Bid.
Under Section 15, subsection 5, of the Decree on Takeover bids, if a competing Bid is made, the first Bidder may extend the offer period until the closing date of the competing Bid.

Price determination

The minimum Bid price ("fair price") shall be equal to the highest price paid by the Offeror for the shares during the twelve-month period before the obligation to launch a Bid arises or, if the Offeror did not acquire any shares in that period, the average stock exchange share price over that year.

Obligation to apply the board passivity rule (art. 9)

The Dutch legal order does not provide for the mandatory application of the passivity rule and Dutch companies may choose whether adopt defensive measures against a Bid.

Obligation to apply the break-through rule (art. 11)

The Dutch legal order does not provide for the mandatory application of the break-through rule.

Reciprocity (art. 12)

The Dutch legal order provides for the application of the reciprocity rule.
Even if a Target company voluntarily renounced to take actions against Takeover bids, the shareholders' general meeting may, on the basis of a reciprocity rule, decide to change such decision and restore its protection, if also the Offeror may adopt defensive measures.

Threshold for squeeze-out and for sell-out rights

The threshold for squeeze-out and for sell-out rights is 95% of voting capital and voting rights of the Target company.

4.12 Portugal

Transposition of the Directive

The Takeover Directive was implemented by the Law-Decree no. 219/2006 of 15th March, 2006, which amended the Portuguese Securities Code.

Supervisory Authority

The Portuguese Supervisory Authority is the CMVM (*Comissão do Mercado de Valores Mobiliáros*) which, pursuant to article 145-A of the Portuguese Securities Code, shall supervise any Takeover bids concerning securities issued by companies subject to Portuguese law as their personal law, provided that the securities concerned by the Bid:

- are admitted to trading on a regulated market located or operating in Portugal;
- are not admitted to trading on a regulated market.

According to article 148 of the Portuguese Securities Code, the CMVM shall also establish forms of co-operation with foreign competent authorities relating to the exchange of information necessary for the supervision of Offers carried out in Portugal and abroad, particularly when an issuer having its registered office in another Member State has more than one home competent authority due to its classes of securities, or when approval of the offer document has been delegated to the competent authority of another Member State.

Mutual recognition of offer documents

Pursuant to article 147-A of the Portuguese Securities Code, the offer document of a Takeover bid for securities admitted to trading on a regulated market located or operating in Portugal and approved by a competent authority of another Member State shall be recognised by the CMVM, provided that:

a) it is translated into Portuguese;

b) a certificate, issued by the competent authority responsible for approval of the offer document, and stating that the offer document meets the relevant European and national provisions, and accompanied by the approved prospectus, is made available to the CMVM.

The CMVM may require supplementary information concerning formalities resulting from the Portuguese regime relating to payment of the consideration, acceptance of the Bid and the tax treatment applicable thereto.

Disclosure

Under article 175 of the Portuguese Securities Code, as soon as the decision to launch a Bid is made, the Offeror shall send the preliminary announcement to the CMVM, the Target company and the managing entities of the regulated markets on which the securities, which are the object of the Offer or comprise the consideration for the Offer, are listed, proceeding immediately with the respective publication.

The publication of the preliminary announcement obliges the Offeror:

- to launch the Offer in terms not less favourable to the addressees than those contained in the announcement;

- to apply for registration of the Offer within the time limit of twenty days, extendable by the CMVM up to sixty days in public exchange Offers [9];
- to inform the representatives of his/her employees or, if there are no such representatives, the employees themselves of the content of the offer documents, as soon as the latter are made public.

The application for registration or approval of the offer document shall be submitted together with the documents provided for by article 115 of the Portuguese Securities Code.

With reference to the application for registration of a Takeover submitted to the CMVM, the Offeror shall attach some documents proving the following facts:

- submission of the preliminary announcement, draft public Offer's announcement and draft offer document to the Target company and competent authorities of the regulated markets on which securities are listed;
- deposit of the consideration in cash or by issue of a bank guarantee that guarantees his/her payment;
- blockage of securities already issued which comprise the consideration and those securities issued by the Target company which confer the right to their subscription or acquisition.

Regarding the quality of information disclosed, they shall be comprehensive, true, up-to-date, clear, objective and legal, even if contained in an advice, a recommendation, an advertisement or a rating notice.

[9] Public Exchange Offer means an Offer in which the Bidder offers to exchange some of his/her securities for a specified number of the Target company's voting shares.

Moreover, advertisements related to public Offers shall:

- refer to the existence or future availability of an offer document and indicate the ways to access the same;
- correspond with the contents of the offer document.

All advertising material related to Takeover bids is subject to prior approval by the CMVM. When the CMVM, following its preliminary examination of the application, considers the offer document approval or the offer registration be viable, it may authorise advertising prior to approval of the offer document or registration, as long as this does not cause disruption to the addressees or the market.

The new article 245-A of the Portuguese Securities Code lays down a disclosure obligation for all companies with shares admitted to trading on a regulated market in respect of their corporate governance practices, notably their equity structure and any existing restrictive or defensive measures, including those relating to the appointment of their boards.

As regards to Target company's obligations, the Portuguese Securities Code also provides that the board of directors of the Target company shall, within eight days of receipt of the draft offer documents and announcement of the Bid and within five days of disclosure of any addenda to the offer documents, send the Offeror and the CMVM a report on the merits and terms of the Offer, and disclose it to the public. The report shall contain information on possible votes against expressed in the board resolution that adopted it.

If, by commencement of the Bid, the Target company's board receives from the employees, directly or through their representatives, an opinion on the effects of the Bid on employment, such opinion shall be attached to the report prepared by the board.

The management body of the Target company shall, from the publication of the preliminary announcement until the assessment of the result of the Offer:

- inform the CMVM daily as to eventual transactions;
- provide with all the information requested by the CMVM in the ambit of its supervisory functions;
- inform the representatives of its employees or, if there are no such representatives, the employees themselves of the content of the offer documents and the report prepared, as soon as the latter are made public;
- act in good faith, particularly, concerning the accuracy of information and honest behaviour.

According to article 127 of the Portuguese Securities Code, at the end of the Offer period, the results of the Offer shall be immediately assessed and published:

- by a financial intermediary that collects all the acceptance declarations; or
- in a special regulated market session.

In the case of a public Offer for distribution, parallel to the disclosure of the results, the financial intermediary or the regulated market operator shall inform whether admission to trading of the securities concerned has been requested.

Thresholds for mandatory Bids

Pursuant to article 187 of the Portuguese Securities Code, any acquirer who holds in a public company, directly or indirectly, more than 30% or 50% of the voting rights, shall launch a Takeover for the totality of shares and other securities issued by the company that granted the right to their subscription or acquisition.
The obligation of launching an Offer does not subsist when the acquirer who holds more than one-third proves before the CMVM that he/she neither exercises control of the Target company nor is involved with it in a group relationship.

Period of Acceptance

Pursuant to article 183 of the Portuguese Securities Code, the Offer period may vary between two and ten weeks.
The CMVM, on its own initiative or if requested by the Offeror, may extend the offer period in the following cases:

- revision of the Bid; or
- launching of a competing Bid; or
- when it is justified in order to protect interests of the Bid addressees.

Competing Bids

According to article 185 of the Portuguese Securities Code, a competing Bid may be launched no later than five days before expiry of the acceptance period of the initial Bid. If a competing Bid is made, the deadline of the original Bid may be extended until that of the competing Bid.

When a competing Bid is launched any Offeror shall be entitled to review the terms of his/her offer even if a revision of the Bid had already been made, as provided pursuant to rules concerning the revision of the Offer.
The first Offeror may also decide to withdraw his/her (voluntary) Bid but he/she shall publish the decision as soon as it is made and, in no event, later than four days following the launch of the competing Bid.
In the event of competing Bids, acceptance may be withdrawn up to the last day of the acceptance period.

Price determination

Pursuant to article 188 of the Portuguese Securities Code, the price for a mandatory Bid may not be less than the highest of the following amounts:

- the highest price paid by the Offeror or by any people acting in concert with him/her (as provided for by article 20(1) of the Portuguese Securities Code) for the acquisition of securities of the same class, in the six months immediately prior to the date of publication of the preliminary announcement of the Offer;
- the average price of these securities verified in a regulated market during the same period.

If the minimum price cannot be determined or if the CMVM understands that the consideration, in cash or securities, proposed by the Offeror is not duly justified or equitable, or is insufficient or excessive, the minimum payment will be determined, at the Offeror's expense, by an independent auditor nominated by the CMVM.

Obligation to apply the board passivity rule (art. 9)

The Portuguese legal order provides for the mandatory application of the passivity rule. Pursuant to article 182 of the Portuguese Securities Code, from the announcement of the Offeror to launch a Takeover for holding more than one-third of the securities of the respective class, and until the assessment of the result or until the prior termination of the respective process, the management body of the Target company may not take actions that might affect its net asset situation (the issue of shares and other securities conferring the right to their subscription or acquisition and the entering into contracts representing the sale of important portions of the company's assets) and which may significantly affect the outcome of the Bid apart from the normal daily management of the company.

Such restriction concerns acts enforcing decisions made before the period referred to therein which have not yet been fully or partially enforced, except for:

a) acts resulting from the fulfilment of obligations assumed before the knowledge of the Offer launch;
b) acts authorised by a shareholders' general meeting convened exclusively to such aim during the period from the announcement of the Offeror to launch a Takeover and until the assessment of the result or until the prior termination of the respective process;
c) acts intended to search competing Bids.

During the above mentioned period, the time limit to convene a shareholders' general meeting is reduced to fifteen days in advance of the meeting. Furthermore, resolutions of the shareholders' general meeting mentioned above at the letter b), as well as any resolutions on early distribution of dividends and other income, may be adopted only by the majority of votes required to amend the articles of association.

Obligation to apply the break-through rule (art. 11)

The Portuguese legal order does not provide for the mandatory application of the break-through rule.

Nothwithstanding it, pursuant to article 182-A of the Portuguese Securities Code, companies may provide in their articles of association that:

- restrictions contemplated in their articles of association or shareholders' agreements on the transfer of shares or other securities carrying rights to acquire shares will be suspended, producing no effects on transfers resulting from the acceptance of a Bid;
- restrictions contemplated in their articles of association or shareholders' agreements concerning the exercise of voting rights will be suspended, producing no effects at shareholders' general meetings called in the terms of letter b) of the preceding paragraph;

- where, following a Takeover bid, at least 75% of the share capital carrying voting rights is achieved, restrictions on transfers and voting rights referred to in the preceding paragraphs shall not apply to the Offeror, and no extraordinary rights to appoint or replace Offeree company's board members may be exercised.

The articles of association of publicly traded companies subject to Portuguese law as their personal law, which do not fully exercise such option, may not provide that changes to or removal of restrictions on transfers or voting rights are conditional upon a favourable vote of more than 75% of all votes cast.

Any approval of amendments to the articles of association by companies subject to Portuguese law as their personal law and issuers of securities admitted to trading on a regulated market shall be notified to the CMVM and, according to article 248, to the public.

Any clauses in the articles of association concerning suspension of the effectiveness of restrictions on transfers and voting rights may not be in effect for a period in excess of eighteen months, but may be renewed through a new resolution of the shareholders' general meeting, adopted in the terms laid down in the law to amend the articles of association.

The Portuguese Securities Code provides that the above mentioned provisions shall not apply in the event of a Member State being a holder of securities in the Offeree company conferred with special rights.

Reciprocity (art. 12)

The Portuguese legal order provides for the application of the reciprocity rule.

The regime concerning the passivity rule shall not apply to Takeover bids conducted by Offeror companies which are not subject to equivalent rules or are controlled by a company not subject to equivalent rules.

With reference to the option to suspend the effectiveness of restrictions on transfers and voting rights, the articles of association of publicly traded companies subject to Portuguese law as their personal law which exercise the mentioned option may provide that the regime foreseen shall not apply to Takeover bids conducted by Offeror companies not subject to equivalent rules or controlled by a company not subject to equivalent rules.

Threshold for squeeze-out and sell-out rights

According to articles 194 and 196 of the Portuguese Securities Code, the threshold for squeeze-out right is 90% of voting rights of the Target company corresponding to the share capital, and the threshold for sell-out right is 90% of the voting rights covered by the Bid.

The Portuguese Securities Code, as regards to squeeze-out right, provides that any person who, following the launch of a general Takeover bid over an Offeree which is a publicly traded company subject to Portuguese law as its personal law, achieves or exceeds, directly or indirectly, 90% of the voting rights corresponding to the share capital up to the determination of the outcome of the Bid, and 90% of the voting rights covered by the Bid, may, in the subsequent three months, acquire the

remaining shares for a fair consideration, in cash, calculated as written above in paragraph "Price determination".

If an Offeror, as a result of acceptance of a general voluntary Takeover bid, acquires at least 90% of shares representing the share capital and carrying voting rights covered by the Bid, it shall be presumed that the consideration for the Bid corresponds to a fair consideration for acquisition of the remaining shares.

With reference to sell-out right, if the Bidder exceeds 90% of the voting rights covered by the Bid, every holder of the remaining shares may, in the three-month period following the determination of the outcome of the Bid, exercise his/her right to sell-out, to which end he/she shall address a written invitation to the controlling shareholders to make a proposal to acquire his/her shares within eight days.

4.13 Spain

Transposition of the Directive

The Takeover Directive was implemented by Law 6/2007, of April 12th, "Securities Market Law on Takeover bids" (which amended the Securities Market Act 24/1988, of 28th July, with regard to Takeover bids and entered into force since 13th August, 2007), and by Takeover bids Royal Decree 1066/2007, of 27th July.

Supervisory Authority

The Spanish Supervisory Authority is the CNMV (*Comisión Nacional del Mercado de Valores*) which supervises the Spanish Stock Markets and the activities of all participants in those markets. The CNMV has tasks and powers in order to supervise and make decision concerning Takeover bids as described below.

Mutual recognition of offer documents

According to article 19 of Royal Decree 1066/2007, when the Takeover bid does not require the CNMV authorisation, the offer document authorised by the competent supervisory authority of another Member State shall be valid for Takeover bids of companies whose shares are admitted to trading on an official secondary market in Spain.

The CNMV may request further information with reference to the procedures concerning the acceptance of a Bid, receipt of the consideration and tax regime applicable to payment.

The offer document shall be translated, at the Bidder's discretion, into Spanish, or a common language used in the international financial environment, or into any other language that the CNMV accepts. In any case, the CNMV may request the Offeror to provide with a summary in Spanish.

Disclosure

Pursuant to article 16 of Royal Decree 1066/2007, as soon as the decision to launch a Bid is made, the Offeror shall disclose his/her intention to make the voluntary Bid. The CNMV shall be entitled to determine, via a circular, the template to be used for the announcements.

Under article 17 of Royal Decree 1066/2007, in the month after the decision to file the Bid has been made public, the Offeror shall submit to the CNMV a written request of authorisation which shall contain the offer document and documentation concerning the Offer.

The CNMV shall, within seven working days, examine the authorisation application and the attached documentation. If it does not make a judgement within the indicated period, it shall be understood that the request has been admitted to the procedure.

Article 21 of Royal Decree 1066/2007 provides that the CNMV shall examine the offer document and the complementary documentation that has been filed and shall authorise or reject the Bid. The Commission is entitled to request the Offeror to provide with additional information, if necessary. The decision to authorise or reject the Bid shall be issued within twenty working days from the receipt of the request.
According to article 22, once the authorization has been confirmed (by the CNMV), the Offeror shall disclose the Bid within five working days, and make the relative announcements public in the "*Boletin de Cotizacion*" of the Stock Exchanges where securities are admitted to trading, and in all of them if integrated in the Spanish Clearing System (*Sistema de Interconexion Bursatil Español*) and, at least, in one national wide newspaper.
From the working day following the publication of the first announcement, the Offeror shall make the offer document and the attached documentation available to the interested parties.
The offer document along with the relative documentation shall be considered available to the public once it has been published, at the discretion of the Offeror, through:

- one or more newspapers with national circulation; or
- in printed format, which shall be placed at the disposition of the public free of charge at the Stock Markets, or at the markets on which securities are admitted to trading, or at the registered offices of the Offeror, the Offeree company, or the entity that acts as a financial intermediary; or

- in electronic format on the websites of the Bidder, or the Target company, or the Stock Markets, or the markets on which they are admitted to trading; or
- in electronic format on the CNMV's website, if the CNMV itself provides for this service for the offer documents it approves.

Under article 24 of Royal Decree 1066/2007, the board of directors of the Target company shall draw up a report concerning the Bid, which shall contain its opinion in favour or against the Bid and expressly state if there is any agreement between the Offeree company and the Offeror, their directors or partners, or between any of them and members of its board of directors, as well as the opinion of the latter regarding the Bid, and the intention to accept it or not by those who are direct or indirect owners of the affected securities.

The report shall also contain the possible repercussions of the Bid and the strategic plans of the Bidder that figure in the offer document, regarding the group interests of the company, employment, and location of centres of activity.

Pursuant to article 25, once a Bid has been launched, the board of directors or management of the Target company and the Offeror shall inform their employees' representatives or, if there are no representatives, the employees themselves, and provide them with a copy of the offer document.

According to article 36 of Royal Decree 1066/2007, within five working days from the expiration of the acceptance period, the governing bodies of the Stock Markets, or, where appropriate, the entities that act on behalf of the Bidder, shall inform the CNMV of the result of the Bid and publish it in the "*Boletin de Cotizacion*" of the Stock Market session during which they received the information.

Thresholds for mandatory Bids

Under article 3 of Royal Decree 1066/2007, any party who, individually or in concert with other people, reaches control in a listed company shall launch a Bid over all securities and directed towards all shareholders. The Bid shall be filed as soon as possible and, at the latest, within one month from the date on which the control has been reached.

According to article 3 of Royal Decree 1066/2007, the control is considered reached when:

- the percentage of voting rights is directly or indirectly equal to, or higher than, 30%; or
- a lower percentage of voting rights has directly or indirectly been reached in the twenty-four months following the date of acquisition of such lower percentage and a number of board members is appointed according to the terms of article 6, who represent, if added to those that have already been appointed, more than half of the company's board members.

Article 8 of Royal Decree 1066/2007 also provides for exemptions to the obligation to launch a mandatory Bid (e.g. free *mortis causa* or *inter vivos* acquisitions, control reached following a voluntary Takeover bid on all securities of a company, etc.).

Period of Acceptance

Pursuant to article 23 of Royal Decree 1066/2007, the period of acceptance of the Bid shall be fixed by the Offeror and shall not be shorter than fifteen calendar days and not longer than sixty calendar days, as from the working day following the date of publication of the first announcement of the Bid.

The Offeror shall be entitled to extend the acceptance period prior to communication to the CNMV. The extension shall be announced via the same means through which the Bid has been made public, at least three calendar days prior to the end of the initial period, indicating the reason for doing so. The acceptance period shall be automatically extended, when necessary, so that at least fifteen calendar days elapse between the date of the shareholders' general meeting, convened to approve the issuing of the securities offered as consideration or to decide upon the conditions to which the Bid has been subjected, and the last day of the acceptance period.

Competing Bids

Pursuant to article 42 of Royal Decree 1066/2007, competing Bids shall be filed within the fifth day prior to expiration of the acceptance period of the previous Offer. Furthermore, a competing Bid shall fulfil the following provisions:

- to have a number of securities at least equal to the number of the previous Bid;

- to improve the previous Bid, either by raising the price or value of the offered consideration, or extending the Bid to a greater number of securities. When the improvement of the Bid is carried out by modifying its nature, the opinion of an independent expert shall be required to accredit it, unless the consideration initially offered was a conversion or exchange of securities, and the new consideration is in cash whose amount exceeds that declared in compliance with the amount established in article 14.4 of Royal Decree 1066/2007.

Under article 44 of Royal Decree 1066/2007, the acceptance period of competing Bids shall be thirty days from the day after the publication of the first announcement of the Bid. Once a competing Bid is launched, the acceptance period of the previous Bid shall be automatically extended so that the acceptance periods of all Bids will expire on the same day. The new acceptance period, equal for all the Bids, shall be published by the CNMV on its website.

Price determination

Pursuant to article 9 of Royal Decree 1066/2007, the Offer price shall not be less than the highest price that the Offeror, or people acting in concert with him/her, has paid or agreed to pay for the same securities during the twelve months prior to announcement of the Bid.

When the share acquisition has been carried out via an exchange or conversion, the price shall be calculated as the weighted average of the indicated shares' market prices on the date of the acquisition.

Under article 9, para. 4, the CNMV is entitled to modify the fair price, calculated in accordance with the above mentioned provision, when specific situations provided for by article 9 itself occur. In all such situations, the CNMV may require the Offeror to provide with a report which explains criteria and modalities of assessment applied in order to determine the fair price. The CNMV shall publish on its website the decision regarding the Offer to be filed at a different price.

Obligation to apply the board passivity rule (art. 9)

The Spanish legal order provides for the mandatory application of the passivity rule. Pursuant to article 28 of Royal Decree 1066/2007, from the announcement of the decision to launch a Bid until the publication of the result of the Bid, the board of directors, or management, or any delegated or representative body of the Target company, its respective members, as well as the companies belonging to the Target company's group and any person who may act in concert with the foregoing, shall obtain the prior authorisation of the shareholders' general meeting, according to that provided for in article 103 of the Composite Text of the Joint-stock Companies Act, approved by Legislative Royal Decree 1564/1989, of 22nd December, before taking any action which could prevent the success of the Bid (except for seeking competing Bids), and before issuing securities which may impede the Offeror to obtain control of the Target company.

In particular, they shall not:

- grant or issue securities which might prevent the success of the Offer;
- carry out the transfer, encumbrance or lease of real-estates or other company's assets, when such transactions might prevent the outcome of the Bid;
- pay extraordinary dividends or remunerate shareholders in any way that does not comply with the normal policy for paying dividends to the Target company's shareholders or holders of securities, unless the relevant shareholders' agreements were previously approved by the competent corporate body and made public.

The shareholders' general meeting shall approve or confirm decisions which do not form part of the normal business activity of the Target company, and whose execution may prevent the success of the Bid, if such decisions have been adopted prior to the above mentioned period and not yet totally or partly implemented.

Obligation to apply the break-through rule (art. 11)

The Spanish legal order does not provide for the mandatory application of the break-through rule.

Notwithstanding it, according to article 29 of Royal Decree 1066/2007, within fifteen working days after the shareholders' general meeting is held, companies shall inform the CNMV of their decision to apply the following neutralisation measures:

- ineffectiveness of restrictions to transfer the securities stated in shareholders' agreements during the period of acceptance of the Bid;

- ineffectiveness of restrictions on voting rights stated in the Target company's articles of association and in shareholders' agreements relating to said company during the shareholders' general meeting convened to decide upon the adoption of defensive measures referred to in article 60 bis.1 of the Securities Market Act 24/1988, of 28th July;
- ineffectiveness of the above mentioned restrictions if the Offeror, following a Takeover bid, has reached a percentage equal to or greater than 75% of the share capital with voting rights of the company.

The CNMV shall publish promptly such information on its website.

The decision to apply the neutralisation measures shall be made by a resolution of shareholders' general meeting pursuant to article 103 of the Composite Text of the Joint-stock Companies Act, approved by Legislative Royal Decree 1564/1989, of 22nd December.

If the shareholders' general meeting approves the ineffectiveness of the above mentioned restrictions, then the company shall make such information public and communicate it to the CNMV for its incorporation in the registry established in article 92 of the Securities Market Act 24/1988, of 28th July, and to the Supervisory Authorities of Member States in which securities of the company are admitted to trading, or where such trading authorisation has been requested.

The Company's Annual management Report, as provided for under article 116 of the Securities Market Act 24/1988, of 28th July, shall include indication of the above mentioned resolution adopted by the shareholders' general meeting.

If the Target company decides to take any of the described neutralisation measures, it shall provide with an appropriate compensation to those holders who suffered loss of their aforementioned rights. Such compensation shall be included in the company's articles of association, specifying therein the form in which the compensation shall be paid and the modalities to determine it.
Shareholders' general meeting of the Target company may revoke the resolution, adopted to take such neutralisation measures, with another decision to be adopted with the same quorum, or the same majority of votes required for the previous resolution.

Reciprocity (art. 12)

The Spanish legal order provides for the application of the reciprocity rule.
Under article 28, para. 5, of Royal Decree 1066/2007, companies are entitled not to apply the passivity rule when they are object of a Takeover bid launched by an entity which does not have its registered office in Spain and which is not subject to equivalent provisions, including therein those rules regarding resolutions to be adopted by the shareholders' general meeting, or by an entity directly or indirectly controlled by such company.
Any resolution, adopted to disapply the passivity rule, shall require the authorisation of the shareholders' general meeting, which shall be adopted, at the latest, eighteen months prior to publication of the Bid.
Pursuant to article 29, para. 6, companies may also disapply neutralisation measures which have been already adopted, when they are the object of a Takeover

bid filed by an entity or group that did not adopt equivalent measures of neutralisation. Any resolution, adopted to disapply such neutralisation measures, shall require the authorisation of the shareholders' general meeting, and shall be adopted, at the latest, eighteen months prior to publication of the Bid.

Threshold for squeeze-out and sell-out rights

Pursuant to article 47 of Royal Decree 1066/2007, if the Offeror, following a Takeover bid concerning all securities of a Target company, holds securities representing at least 90% of such company's voting share capital, or if the previous Takeover bid had been accepted by securities' holders representing at least 90% of the voting rights to which the Bid had been directed, then the Offeror may purchase all the remaining securities at a fair price. Such fair price shall correspond to the consideration of the Takeover bid. Likewise, holders of securities are entitled to ask for the Offeror to purchase all their remaining securities at the said price.
Under article 48 of Royal Decree 1066/2007, the squeeze-out or sell-out rights shall be exercised within three months from the expiration date of the acceptance period.

4.14 Sweden

Transposition of the Directive

The Takeover Directive was implemented by the Swedish Act concerning Public Takeover bids in the Stock Market (2006:451) which entered into force on 1st July, 2006. This implementation resulted in some amendments to the previous regulations contained in the Securities Exchange and Clearing Operations Act (1992:543) and the Financial Instruments Trading Act (1991:980).

As provided for by the Securities Exchange and Clearing Operations Act (1992:543), Takeover bids are also regulated by the Rules of the OMX Nordic Exchange Stockholm AB (the Stock Exchange) or the authorised market place where the Target company's shares are listed which shall comply with the requirements of the Directive 2004/25/EC.

Supervisory Authority

The Supervisory Authority is the Swedish Financial Supervisory Authority (*Finansinspektionen*).

When the Takeover Act came into force on 1st July, 2006 the Financial Supervisory Authority's responsibility for the supervision over the securities markets increased significantly. In fact, the Authority has the power to review offer documents and acts as the first level of appeal for the rulings of the Securities Council and supervises compliance with the provisions on mandatory Offers. The Act

concerning Public Takeover bids in the Stock Market (2006:451), Chapter 7, Section 1, contains provisions that entitle the Authority:

- to obtain the information required by the Authority itself for its supervision;
- to prohibit public Takeover bids; and
- to prohibit advertising regarding a public Takeover bid.

On request of a party with a valid interest in the matter, the Authority shall provide with information regarding whether a mandatory Bid requirement applies, or whether a given measure contravenes the provisions concerning defensive measures. If special reasons apply, the Authority may, on application, permit exceptions from the provisions on mandatory Offers and defensive measures. Conditions may be attached to such an exemption.

In the course of its supervisory activities, the Authority shall exchange information and cooperate with the relevant public authorities in other Countries.

Some administrative functions have been delegated to the Securities Council which, for instance, shall decide on:

- the extension of the time allowed for the drawing up of the offer document and the application for its approval;
- whether the duty to make an Offer arises for a party close to the Bidder;
- whether an action is against the provisions regarding defensive actions;
- exemptions from the provisions regarding mandatory Offers;
- exemptions from the provisions regarding defensive actions.

Mutual recognition of offer documents

According to Chapter 2a, Section 10, of the Financial Instruments Trading Act (1991:980), an offer document which has been approved by an authorized authority in another EEA country is valid in a public Takeover bid for shares in a foreign company whose shares are registered for trading on a stock exchange or authorized market in Sweden.

The Swedish Financial Supervisory Authority may request that such an offer document is to be translated into Swedish.

The Authority may also request that such an offer document contains information concerning the manner in which holders of shares listed on a stock exchange or authorized market in Sweden are to proceed in order to accept the Offer and receive payment, and also as regards to tax liability on the payment.

Disclosure

According to the OMX Nordic Exchange Stockholm Rules Concerning Public Takeover bids in the Stock Market (2007-07-01), simultaneously to the announcement of a Bid, the Offeror shall notify the Financial Supervisory Authority of:

- the Bid; and
- the undertaking given to the OMX Nordic Exchange Stockholm or authorized market place on which the Target company's shares are listed to comply with

the Rules on Takeover bids determined by the Stock Exchange or authorized market place and to accept any sanctions that the Stock exchange or authorized market place may impose in case of breach of such Rules.

If the Bidder discloses information concerning plans for an Offer, this information shall be submitted simultaneously to the Authority.

Following a decision to make an Offer, the Bidder shall immediately make the Offer public by means of a press release containing information such as the Bidder's identity, the number of shares in the Target company held by the Bidder or controlled by the Bidder in some other manner, the main terms of the Offer, how the Offer is to be financed, and the conditions for fulfilment of the Offer.

If the Bidder has a website on the Internet, the information shall also be made available on such website as soon as possible, unless there are special reasons for not doing so.

The Offeror shall, within four weeks of announcement of the Offer, draw up an offer document which shall be submitted to the Authority for approval. In case of special reasons, the Authority may extend the above mentioned period.

The offer document shall be approved by the Authority and made available to all shareholders covered by the Bid.

If the Bidder prepares an information brochure to supplement the offer document, such brochure:

- shall not give the impression that it replaces the offer document;

- shall clearly indicate, on the front cover, that an offer document is available, and how it may be obtained;
- shall contain basic information presented in the offer document about the Bidder, the Target company and the Offer;
- shall be objective and impartial;
- may not contain information that is not included in the offer document.

A Bidder domiciled in Sweden shall inform his/her employees regarding the launching of a public Takeover bid and the offer document. This information shall be provided as soon as the Takeover bid and the offer document, respectively, have been made public.

The Target company shall inform its employees about the Takeover bid, the offer document and its recommendation to shareholders as a result of the Bid. This information shall be provided as soon as the Takeover bid, the offer document and the recommendation, respectively, have been made public.

The board of directors of the Target company shall announce its opinion of the Offer in reasonable time before expiry of the acceptance period, stating the reasons for its attitude. If the board concludes that it can neither approve nor reject the Offer, then it shall explain the reasons for its attitude.

Threshold for mandatory Bids

Pursuant to Chapter 3, Section 1, of the Act concerning Public Takeover bids in the Stock Market (2006:451), a party with no shareholding or with a shareholding that represents less than 30% of the votes for all shares in a company which, alone or together with a related party, achieves a shareholding which represents at least 30% of the votes for all shares in the company shall:

- immediately make public the extent of this shareholding in such company; and
- launch a public Takeover bid for the remaining shares in the Target company (mandatory Bid) within four weeks.

The mentioned rule shall also apply if a party achieves a shareholding representing at least 30% of the votes for all shares as a result of measures taken by the company or another shareholder, alone or together with a relating party, and subsequently achieves increased voting rights by acquiring one or more additional shares in the company by a means other than a public Offer for acquisition of the remaining shares in the company.

These provisions shall not apply if a party achieves a shareholding representing at least 30% of the votes for all shares as a result of a (voluntary) public Takeover bid for all shares in the company.

Period of Acceptance

As provided by the OMX Nordic Exchange Stockholm Rules concerning Public Takeover bids in the Stock Market (2007-07-01), the period of acceptance of a Bid shall be not less than three weeks nor more than ten weeks, and may not commence before the offer document has been made public in the manner stated in the Financial Instruments Trading Act (1991:980).

The acceptance period may be extended if the Bidder has reserved the right to do so, or if an extension does not delay payment to those who have already accepted the Offer. Payment may only be postponed if the offer document contains a proviso to this effect.

The acceptance period may not be prolonged indefinitely.

Competing Bids

According to the OMX Nordic Exchange Stockholm Rules concerning Public Takeover bids in the Stock Market (2007-07-01), the Offeror may increase the offer price announced, and competing Offers are similarly free from any restrictions.

If the first Bid was conditional on the fact that no other party should launch competing Bids with more favourable terms and such competing Bids are announced, then the Bidder may withdraw his/her Offer. If the Bidder decides to withdraw the Offer, this shall be made public immediately.

Price determination

According to the OMX Nordic Exchange Stockholm Rules concerning Public Takeover bids in the Stock Market (2007-07-01), the minimum price of the Offer may not be less than the average market price of the shares in question during the twenty trading days prior to the date of announcement that the threshold for a mandatory Offer has been attained or exceeded. If, however, the acquirer has purchased shares in the six-month period prior to announcement of the Offer at an even higher price, this price represents the determining factor, and the terms of the Offer shall comply with the terms of the prior transaction.

Obligation to apply the board passivity rule (art. 9)

The Swedish legal order provides for the mandatory application of the passivity rule. Pursuant to Chapter 5, Section 1, of the Act concerning Public Takeover bids in the Stock Market (2006:451), if, on the basis of information provided by the party intending to make a public Takeover bid, the board or the managing director of a company has reason to assume that a Bid of this nature is imminent or if such a Bid has been made, the company may only take steps which may impair the prerequisites for making or implementing the Bid following a decision by a shareholders' general meeting.
However, the company may seek alternative Offers.

Obligation to apply the break-through rule (art. 11)

The Swedish legal order does not provide for the mandatory application of the break-through rule.

Nothwithstanding it, according to Chapter 6, Section 1, of the Act concerning Public Takeover bids in the Stock Market (2006:451), a break-through provision may be included in the articles of association of a company.

A decision to introduce a provision in the articles of association is valid only if it has been supported by all shareholders attending the general meeting and if they jointly represent at least nine-tenths of all shares in the company.

The Target company shall notify the supervisory authority in the State, or States in the European Economic Area (EEA) in which the company's shares are registered for trading, of the above mentioned decision.

If the shareholders' general meeting is to determine whether the company is to take a defensive measure, any provision in the articles of association or in an agreement between shareholders that limits the number of votes which a shareholder may cast at a general meeting is invalid. Furthermore, at such a general meeting all shares entailing an equal entitlement to participation in the company's assets and profits shall have the same voting weight.

If, as a result of a public Takeover bid, a Bidder who has achieved a shareholding corresponding to at least three-quarters of the shares in a company whose articles of association contain a break-through provision, requests that a general meeting of shareholders is to be convened to amend the articles of association, or to dismiss or appoint members of the board, this is to take place as soon as possible. Notice

to convene the general meeting shall be issued not earlier than four weeks and not later than two weeks prior to the general meeting itself. At such shareholders' general meeting all shares entailing an equal entitlement to participation in the company's assets and profits shall have the same voting weight in a decision regarding a change in the articles of association or the dismissal or election of board members.

At such a general meeting, a clause in the articles of association or in an agreement between shareholders which limits the number of votes that a shareholder may cast at a general meeting is invalid. This also applies to a clause in the articles of association that gives a specific shareholder special rights regarding the election of board members.

Reciprocity (art. 12)

The Swedish legal order does not provide for the application of the reciprocity rule.

Threshold for squeeze-out and for sell-out rights

The threshold for squeeze-out and sell-out rights is 90% of the shares and votes in the Target company.

4.15 United Kingdom

Transposition of the Directive

The Takeover Directive 2004/25/EC was implemented on 20th May, 2006 by "Takeovers Directive Regulations and Amendments to the Takeover Code".
Takeovers in the UK are governed by the City Code on Takeovers and Mergers, also known as the "City Code", and by the Companies Act 2006.

Supervisory Authority

The UK Supervisory Authority is the Panel on Takeovers and Mergers.
The Panel on Takeovers and Mergers issues and administers the City Code on Takeovers and Mergers and supervises and regulates Takeovers and other matters to which the Code applies in accordance with the rules set out in the Code. It has been designated as the Supervisory Authority to carry out certain regulatory functions in relation to Takeovers pursuant to the Directive on Takeover bids.
According to Part 28, Chapter 1, of the Companies Act 2006, the Panel shall adopt rules giving effect to the Takeover Directive, and may give rulings on the interpretation, application or effect of rules and require documents and information.

Disclosure

Section D, Rule 2.2, of the City Code provides that an announcement is required when:

- a firm intention to make an Offer (the making of which is not, or has ceased to be, subject to any pre-condition) is notified to the board of the Offeree company from a serious source, irrespective of the attitude of the board to the Offer;
- immediately upon an acquisition of any interest in shares which gives rise to an obligation to launch a Bid;
- when, following an approach to the Offeree company, the Offeree company is the subject of rumour and speculation or there is an untoward movement in its share price;
- when, before an approach has been made, the Offeree company is the subject of rumour and speculation or there is an untoward movement in its share price and there are reasonable grounds for concluding that it is the potential Offeror's actions (whether through inadequate security or otherwise) which have led to the situation;
- when negotiations or discussions are about to be extended to include more than a very restricted number of people (outside those who need to know in the companies concerned and their immediate advisers). An Offeror wishing to approach a wider group, for example in order to arrange financing for the Offer (whether equity or debt), to seek irrevocable commitments or to organise a consortium to make the Offer should consult the Panel; or

- when a purchaser is being sought for an interest, or interests, in shares carrying in aggregate 30% or more of the voting rights of a company or when the board of a company is seeking one or more potential Offerors, and:
  - the company is the subject of rumour and speculation or there is an untoward movement in its share price; or
  - the number of potential purchasers or Offerors approached is about to be increased to include more than a very restricted number of people.

Under Section I, Rule 19, of the City Code, each document or advertisement issued, or statement made, during the course of an Offer, shall be prepared with the highest standards of care and accuracy and the information given shall be adequately and fairly presented. This applies whether it is issued by the company direct or by an adviser on its behalf.

Pursuant to Section M, Rule 30.1, of the City Code, the offer document shall normally be posted to shareholders of the Offeree company within twenty-eight days of the announcement of a firm intention to make an Offer. The Panel shall be consulted if the offer document is not to be posted within this period. On the day of posting, the Offeror shall put the offer document on display in accordance with Rule 26 and announce in accordance with Rule 2.9 that the offer document has been posted and where the document can be inspected.

At the same time, both the Offeror and the Offeree company shall make the offer document readily available to their employees' representatives or, where there are no such representatives, to the employees themselves.

Pursuant to Rule 30.2, of the City Code, the board of the Offeree company shall publish a circular containing its opinion, as soon as possible after publication of the offer document and normally within fourteen days, and shall:

- post it to its shareholders; and
- make it readily and promptly available to its employees' representatives or, where there are no such representatives, the employees themselves.

On the day of posting, the board of the Offeree company shall put the circular on display in accordance with Rule 26 and announce in accordance with Rule 2.9 that the circular has been posted and where it can be inspected.

The board of the Offeree company shall append to the circular containing its opinion a separate opinion from the representatives of its employees on the effects of the Offer on employment, provided that such opinion is received in good time before publication of that circular.

Thresholds for mandatory Bids

According to Section F, Rule 9, of the City Code, except with the consent of the Panel, when:

(a) any person acquires, whether by a series of transactions over a period of time or not, an interest in shares which (taken together with shares in which persons acting in concert with him/her are interested) carry 30% or more of the voting rights of a company; or

(b) any person, together with persons acting in concert with him/her, is interested in shares which in the aggregate carry not less than 30% of the voting rights of a

company but does not hold shares carrying more than 50% of such voting rights and such person, or any person acting in concert with him/her, acquires an interest in any other shares which increases the percentage of shares carrying voting rights in which he/she is interested,

such person shall extend Offers, on the basis set out in Rules 9.3, 9.4 and 9.5, to the holders of any class of equity share capital whether voting or non-voting and also to the holders of any other class of transferable securities carrying voting rights. Offers for different classes of equity share capital shall be comparable. The Panel shall be consulted in advance in such cases.

An Offer will not be required under this Rule where control of the Offeree company is acquired as a result of a voluntary Offer made in accordance with the Code to all the holders of voting equity share capital and other transferable securities carrying voting rights.

Period of Acceptance

Under Section M, Rule 31, of the City Code, an Offer shall initially be open for at least twenty-one days following the date on which the offer document is posted.

In any announcement of an Offer extension , either the next closing date shall be stated or, if the Offer is unconditional as to acceptances, a statement may be made that the Offer will remain open until further notice. In the latter case, or if the Offer will remain open for acceptances beyond the seventieth day following posting of the offer document, at least a fourteen-days' notice in writing shall be given, before the Offer is closed, to those shareholders who have not accepted it.

There is no obligation to extend an Offer whose conditions are not met by the first or any subsequent closing date.
After an Offer becomes or is declared unconditional to acceptances, the Offer itself shall remain open for acceptance for not less than fourteen days after the date on which it would otherwise have expired. When, however, an Offer is unconditional to acceptances from the outset, a fourteen-day extension is not required but the position shall be set out clearly and prominently in the offer document.

Competing Bids

If, after a "no extension statement" in relation to the duration of the Offer has been made, a competitive situation arises, then the Offeror may choose not to be bound by such statement and to extend his/her Offer, provided that:

- notice to this effect is given as soon as possible (and in any event within four business days after the date of the firm announcement of the competing Offer), and shareholders are informed in writing at the earliest opportunity; and
- any Offeree shareholders who accepted the Offer after the date of the "no extension statement" are given a right of withdrawal for a period of eight days following the date on which the notice is posted.

Price determination

Pursuant to Section F, Rule 9.5, of the City Code, an Offer made under Rule 9 (Mandatory Bid) shall, in respect of each class of share capital involved, be in cash or accompanied by a cash alternative at not less than the highest price paid by the

Offeror or any person acting in concert with him/her for any interest in shares of that class during the twelve months prior to the announcement of that Offer. The Panel shall be consulted where there is more than one class of share capital involved.

If, after an announcement of an Offer made under Rule 9 for a class of share capital and before the Offer closes for acceptance, the Offeror, or any person acting in concert with him/her, acquires any interest in shares of that class at above the Offer price, then he/she shall increase his/her Offer for that class to not less than the highest price paid for the interest in shares so acquired. Immediately after the acquisition, an appropriate announcement shall be made in accordance with Rule 7.1.

In certain circumstances, the Panel may determine that the highest price calculated shall be adjusted.

The cash Offer or the cash alternative shall remain open after the Offer has become or been declared unconditional as to acceptances for not less than fourteen days after the date on which it would otherwise have expired.

Obligation to apply the board passivity rule (art. 9)

The UK legal order provides for the mandatory application of the passivity rule.

According to Section, Rule 21, of the City Code, during the course of an Offer, or even before the date of the Offer if the board of the Offeree company has reason to believe that a bona fide Offer might be imminent, the board shall not, without the shareholders' approval at a general meeting:

(a) take any action which may result in any Offer or bona fide possible Offer being

frustrated or in shareholders being denied the opportunity to decide on its merits; or

(b) (i) issue any authorised but unissued shares or transfer or sell, or agree to transfer or sell, any shares out of treasury;

(ii) issue or grant options in respect of any unissued shares;

(iii) create or issue, or permit the creation or issue of, any securities carrying rights of conversion into or subscription for shares;

(iv) sell, dispose of or acquire, or agree to sell, dispose of or acquire, assets of a material amount; or

(v) enter into contracts otherwise than in the ordinary course of business.

The Panel shall be consulted in advance if there is any doubt as to whether any proposed action may fall within this Rule.

The notice convening any relevant meeting of shareholders shall include information about the Offer or anticipated Offer.

Where it is felt that:

(A) the proposed action is in pursuance of a contract entered into an earlier or another pre-existing obligation; or

(B) a decision to take the proposed action had been taken before the beginning of the period referred to above which:

(i) has been partly or fully implemented before the beginning of that period; or

(ii) has not been partly or fully implemented before the beginning of that period but is in the ordinary course of business, the Panel shall be consulted and its consent to proceed without a shareholders' general meeting obtained.

OBLIGATION TO APPLY THE BREAK-THROUGH RULE (ART. 11)

The UK legal order does not provide for the mandatory application of the break-through rule.

Anyway, pursuant to Part 28, Chapter 2, Rules 966 and following, of Companies Act, a company may, by special resolution (an "opting-in resolution"), opt in if the following three conditions are met in relation to the company.

The first condition is that the company has voting shares admitted to trading on a regulated market.

The second condition is that:

(a) the company's articles of association:
    (i) do not contain any such restrictions as are mentioned in Article 11 of the Takeovers Directive; or
    (ii) if they do contain any such restrictions, provide for the restrictions not to apply at a time when, or in circumstances in which, they would be disapplied by that Article, and
(b) those articles do not contain any other provision which would be incompatible with that Article.

The third condition is that:

(a) no shares conferring special rights in the company are held by:
    (i) a minister;
    (ii) a nominee of, or any other person acting on behalf of, a minister; or
    (iii)a company directly or indirectly controlled by a minister, and

(b) no such rights are exercisable by, or on behalf of, a minister under any enactment.

A company may revoke an opting-in resolution by a further special resolution (an "opting-out resolution").

Where a Takeover bid is made for an opted-in company:

- an agreement to which this Section applies is invalid in so far as it places any restriction on:
  (a) the transfer to the Offeror, or at his/her direction to another person, of shares in the company during the offer period;
  (b) the transfer to any person of shares in the company at a time during the offer period when the Offeror holds shares amounting to not less than 75% in value of all the voting shares in the company;
  (c) rights to vote at a shareholders' general meeting of the company that decides whether to take any action which might result in the frustration of the Bid;
  (d) rights to vote at a shareholders' general meeting of the company that:
    (i) is the first such meeting to be held after the end of the offer period, and
    (ii) is held at a time when the Offeror holds shares amounting to not less than 75% in value of all the voting shares in the company.

This section applies to an agreement:

(a) entered into between a person holding shares in the company and another such person on or after 21st April 2004, or

(b) entered into at any time between such a person and the company, and it applies to such an agreement even if the law applicable to the agreement (apart from this section) is not the law of a part of the United Kingdom.

If a person suffers loss as a result of any act or omission that would (but for this Section) be a breach of an agreement to which this Section applies, he/she is entitled to compensation, of such amount as the Court considers equitable, from any person who would (but for this Section) be liable to him/her for committing or inducing the breach.

Where a Takeover bid is made for an opted-in company, the Offeror may, by making a request to the directors of the company, require them to call a shareholders' general meeting of the company if, at the date at which the request is made, he/she holds shares amounting to not less than 75% in value of all the voting shares in the company.

A company that has passed an opting-in resolution, or an opting-out resolution, shall notify (within fifteen days):

(a) the Panel; and

(b) where the company

  (i) has voting shares admitted to trading on a regulated market in an EEA State other than the United Kingdom, or

  (ii) has requested such admission, the authority designated by that State as the supervisory authority for the purposes of Article 4.1 of the Takeovers Directive.

Reciprocity (art. 12)

The UK legal order does not provide for the application of the reciprocity rule.

Threshold for squeeze-out and sell-out rights

Under Chapter 3, Rules 979, of the Companies Act, if the Offeror has, by virtue of acceptances of the Offer, acquired or unconditionally contracted to acquire:

- not less than 90% in value of the shares to which the Offer relates, and
- in a case where the shares to which the Offer relates are voting shares, not less than 90% of the voting rights carried by those shares, he/she may give notice to the holder of any shares to which the Offer relates which has not acquired or unconditionally contracted to acquire, that he desires to acquire those shares.

According to Rule 983, the holder of any voting shares to which the Offer relates, who has not accepted the Offer, may require the Offeror to acquire those shares if, at any time before the end of the period within which the Offer can be accepted:

a) the Offeror has, by virtue of acceptances of the Offer, acquired or unconditionally contracted to acquire some (but not all) of the shares to which the Offer relates, and

b) those shares, with or without any other shares in the company which he/she has acquired or contracted to acquire (whether unconditionally or subject to conditions being met):

   i) amount to not less than 90% in value of all the voting shares in the company, and

   ii) carry not less than 90% of the voting rights in the company.

Countries	Transposition of the Directive	Thresholds for mandatory bids	Thresholds for squeeze out and sell out right	Mandatory Passivity rule (art.9)	Mandatory Break-through (art. 11)	Reciprocity (art. 12)
Austria	May 2006	30%	90%	opt in	opt out	opt out
Belgium	September 2007	30%	95%	opt out	opt out	opt in
Denmark	May 2006	50% plus 1 share	90%	opt out	opt out	opt in
Finland	July 2006	30%-50% plus 1 share	90%	opt out	opt out	opt out
France	May, 2006	33,33%	95%	opt in*	partial	opt in only art. 9
Germany	July, 2006	30%	95%	opt out	opt out	opt in
Greece	May 2006	33,33%	90%	opt in	opt out	opt in
Ireland	May 2006	30%	90%	opt in	opt out	opt out
Italy	November 2007	30%	95%-90%/95%	opt out	partial	opt in
Luxembourg	May 2006	33,33%	95%-90%	opt out	opt out	opt in
Netherlands	October 2006	30%	95%	opt out	opt out	opt in
Portugal	March 2006	33,33%-50%	90%	opt in	opt out	opt in
Spain	August 2007	30%	90%	opt in	opt out	opt in
Sweden	July 2006	30%	90%	opt in	opt out	opt out
UK	May 2006	30%	90%	opt in	opt out	opt out

* (partial exemption: “poison pill warrants”)

Key:
Opt in means that the Member State implemented the relative provision of the Directive.
Opt out means that the Member State did not implement the relative provision of the Directive.

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Design Vafir

Sodali and "LTT Studio Legale Associato" hope you found this analysis useful.

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Comparative Analysis of European Regulations dealing with Takeover bids is the first in a series of analytical research reports that Sodali will be publishing on issues relating to corporate governance, AGMs (Annual General Meetings), investor relations and financial markets. Sodali's future publications will include studies of cross-border voting practices, investor activism and shareholder participation at AGMs and EGMs (Extraordinary General Meetings).

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